

COVER PAGE

Ground Lease Agreement  
Lease Template

FOR STAND-ALONE PROPERTIES (NO SHARED PARKING, DRIVE AISLES OR COMMON  
AREAS)

Located at

Orlando, FL

**GROUND LEASE**

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**GROUND LEASE AGREEMENT**

**THIS GROUND LEASE AGREEMENT** ("Lease") is entered into by and between \_\_\_\_\_, a \_\_\_\_\_ with an office at 941 W. Morse Blvd., Suite 315, Winter Park, FL 32789 ("Landlord") and ("Tenant") and is effective on the date this Lease is fully executed by Landlord and Tenant and each party has received at least one (1) fully executed counterpart of it ("Effective Date").

Landlord and Tenant, each intending to be legally bound, agree as follows:

**1. PREMISES.** Landlord demises and leases to Tenant, and Tenant leases from Landlord, all that certain property with the buildings and improvements (if any) thereon located at, \_\_\_\_\_ Florida, being commonly known Parcel ID number (#) \_\_\_\_\_, as more particularly described on **Exhibit A**, attached hereto and made a part hereof, together with the rights granted to Tenant as described in this Lease and subject to the Permitted Encumbrances, as defined below (the Premises). The Premises includes any improvements or structures of the Landlord now existing and any improvements or structures hereafter constructed upon the Premises and shall specifically include \_\_\_\_\_ of which shall be constructed as part of Tenant's Work as more particularly set forth in **Exhibit B** attached hereto. Herein, Improvements means the buildings, improvements, fixtures and additional improvements constructed by Tenant on the Premises.

**2. COMMENCEMENT AND ENDING DATE; TITLE AND QUIET ENJOYMENT.** The term of this Lease shall commence on the Effective Date. The term of this Lease shall end on the last day of the consecutive Lease Year (defined in Section 4, below) after the Rent Commencement Date (defined in Section 4 below). Such term shall be called the Initial Term. Any reference in this Lease to the term of this Lease, or words of similar import, shall refer to the Initial Term and any additional period or periods for which such term shall have been extended. Landlord covenants and warrants that Landlord has full power and authority to enter into this Lease and that so long as Tenant shall perform its obligations under this Lease, Tenant shall have and enjoy full, quiet and peaceful possession of the Premises free of interference by Landlord or anyone claiming through Landlord, subject to the provisions of this Lease, and the Premises shall be subject to and benefited by any easements, restrictions, reservations and other instruments now of record applicable to the Premises (collectively, the "**Permitted Encumbrances**"), as may be amended from time to time.

**3. OPTIONS TO EXTEND THE TERM.** So long as Tenant is not in default under this Lease at the time of exercise, or at the time the respective extension option is to commence, and Tenant is operating at the Premises for the Permitted Use (defined in Section 11 below), Tenant shall have the right to extend the term of this Lease for \_\_\_\_ (\_\_\_) additional periods of \_\_\_\_ (\_\_\_) years each (each, an "Extension Period") from the date upon which it would otherwise end, on the same terms and conditions as those specified in this Lease (except that neither Landlord nor Tenant shall be required to perform any Landlord's Work or Tenant's Work, if any, provided herein). Any right to extend the term of this Lease shall be considered as having been exercised by Tenant, unless Tenant gives Landlord notice of Tenant's election not to exercise an option to extend the term at least one hundred eighty (180) days prior to the expiration of the Original Term or the Extension Period then in effect.]

**4. LEASE YEAR.** The term "Lease Year" as used herein shall mean a period of twelve (12) consecutive full calendar months. The first Lease Year shall commence on the Rent Commencement Date (defined below). If the Rent Commencement Date shall not occur on the first day of a calendar month, the first Lease Year shall commence upon the first day of the calendar month following the Rent Commencement Date. Each succeeding Lease Year shall commence upon the anniversary date of the first

Lease Year.

**5. BASE RENT.** Tenant shall pay Landlord, without demand or offset except as specifically set forth herein, a fixed annual rent per Lease Year ("Rent") plus applicable sales tax, payable in equal monthly installments ("Monthly Rent"), in advance, on or before the first (1st) day of each month during the Term of this Lease by ACH wire transfer to Landlord's Bank Account (as defined below) as follows:

<u>Lease Year</u>	<u>Annual Rent</u>	<u>Monthly Rent</u>
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During the remainder of the Term hereof the monthly Base Rent for each succeeding Lease Year (as defined herein) shall be increased by \_\_\_\_\_ percent (%) of the monthly Base Rent for the previous Lease Year.

Rent shall commence on the date (the "Rent Commencement Date"), which is the earlier of: (a) the date on which Tenant opens the Premises for business to the public or \_\_\_\_\_ days after the Delivery Date (defined in Section 12 below). Tenant shall pay all sales and use taxes imposed upon the privilege of leasing or renting the premises by any city, county, state, or federal taxing authority (other than taxes imposed on Landlord for doing business in the city, county or state in which the Premises are located), which amount shall be added to each of the installments of Monthly Rent and Additional Rent. Any Rent (including Additional Rent [or Percentage Rent] not paid when due shall be subject to a late charge equal to five percent (5%) of such installment to compensate Landlord or the extra costs Landlord will incur as a result of such payment. Any Rent not paid within thirty (30) days after the date due shall also accrue interest from the due date at a rate of one and one half percent (1.5%) per month, or the highest rate permitted by applicable Law, whichever shall be less (the Default Rate) until paid. If any check delivered by Tenant is dishonored by Tenant's bank, the amount due shall be automatically deemed a late payment and treated accordingly as set forth herein. In addition thereto, for each dishonored check Tenant shall pay to Landlord a service charge covering administrative expenses as provided in section 68.065(3), Florida Statutes, as same may be amended from time to time. The parties hereby agree that such late fee represents a fair and reasonable estimate of the cost that Landlord will incur by reason of the late payment by Tenant. Acceptance of such late charges by the Landlord shall in no event constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent Landlord from exercising any of the other rights and remedies granted hereunder. All Rent shall be paid at the office of Landlord, or at such other place in the United States of America designated by Landlord, in lawful money of the United States of America, without any prior notice of demand. Unless otherwise expressly stated in this Lease, Tenant's obligation to pay Rent hereunder shall be an independent covenant, and no abatement, offset, diminution or reduction of (a) Rent, charges or other compensation; or (b) Tenant's other obligations under this Lease shall be allowed to Tenant or any person claiming under Tenant, under any circumstances or for any reason whatsoever. All payments made by Tenant shall be applied to amounts payable by Tenant hereunder in such order as Landlord shall determine in its sole discretion.

Tenant is required to make payments of Rent and all other payments to Landlord required by the Lease via Automated Clearing House Transfer ("ACH Payment"); in accordance with the terms and conditions of this Paragraph. Tenant shall, within fifteen (15) days of the date of this Lease, execute and deliver to Landlord a complete Authorization Agreement in the form set forth in Exhibit I attached hereto or on such other form as shall be reasonably requested by Landlord, together with a voided check for account

verification, establishing arrangements whereby payments of the Rent and other funds are transferred by ACH Payment initiated by Landlord from an account established by Tenant at a financial institution approved by Landlord. Thereafter, Tenant shall continue to pay all rental and other obligations by ACH Payment initiated by Landlord unless otherwise directed by Landlord. Any denial or delay of a scheduled ACH Payment resulting from insufficient funds in the account Tenant designates for the ACH debit or any other delay resulting from Tenant's actions, subject to any cure period prescribed under this Lease, shall immediately and automatically be, a default of the Lease.

**6. PERCENTAGE RENT; REPORTING.** In addition to the Base Rent, Tenant shall also pay to Landlord each year percentage rent in an amount equal to [\_\_\_\_\_] multiplied by the excess of (i) the total Gross Sales made in or from the Premises during the calendar year in question over (ii) the Breakpoint. As used herein, the "Breakpoint" shall mean the aggregate of the minimum guaranteed rent payable for the calendar year in question divided by \_\_\_\_\_. [If a natural breakpoint is agreed, this number should be the same as the percentage in the blank above expressed as a decimal]. The percentage rent shall be paid on or before January 10 following each calendar year in which the Gross Sales made in or from the Premises exceeds the Breakpoint. In no event shall the Rent to be paid by Tenant and retained by Landlord for any calendar year be less than the Base Rent specified in this lease. If this lease should commence on a date other than the first day of a calendar year or terminate on a date other than the last day of a calendar year, the Breakpoint shall be calculated by reference to the aggregate minimum guaranteed rent payable during such fractional part of the calendar year following the Rent Commencement Date or preceding the termination date as the case may be, and the amount of gross sales used to calculate percentage rent shall be the total gross sales made in or from the Premises during such fractional calendar year. Upon the termination of this lease, Tenant shall make a payment of percentage rent for the final fractional calendar year within ten (10) days after the termination of this Lease. The provisions of this Section shall survive the expiration or termination of this Lease.

Tenant covenants and agrees to keep at the Premises and at its general office, true and accurate books and records in accordance with generally accepted accounting principles, in which all Gross Sales shall be documented. The books and records shall include all of Tenant's bank statements, sales tax returns, daily records of sales, income tax returns, and records of purchases and inventory records relating to Tenant's business conducted in the Premises. Such books and records shall be open to the inspection of Landlord and Landlord's authorized agents at all reasonable times during business hours at any time during the Term of this Lease and for a period of at least two (2) years after the expiration or termination of this Lease.

Landlord shall have the right to audit Tenant's books and records to determine the accuracy of any written statement of Gross Sales or Annual Report submitted by Tenant. If Landlord shall make an audit of Tenant's books and records and such audit shows that the amount of Gross Sales on Tenant's statement was understated by more than two percent (2%), then Tenant (in addition to paying the Percentage Rent due for such understatement and interest thereon at the Interest Rate) shall pay to Landlord the cost of the audit. The burden of proof to show Landlord's Gross Sales figures as inaccurate shall be on Tenant. If Landlord schedules an audit pursuant to this Article and the auditor is unable to conduct the audit due to Tenant's failure to produce or keep proper records or failure to keep the appointment or other hindrance, Tenant shall pay, on demand, as Additional Rent the auditor's fees and expenses regardless of whether the examination is held at a later date.

Within fifteen (15) days after the end of each month during the Lease Term, Tenant shall submit to Landlord, and/or any party designated by Landlord, a complete copy of the Sales and Use Tax Return submitted to the State of Florida Department of Revenue, reflecting the full amount of Tenant's gross receipts from the Premises made during the previous calendar month. If Tenant shall fail to deliver any such requested financial statements within thirty (30) days of Landlord's request therefor, in addition to

any other rights or remedies Landlord may have, upon fifteen (15) days' notice to Tenant, Landlord may impose on Tenant a fine in the amount of not more than One Hundred and 00/100 Dollars (\$100) for Tenant's failure to timely deliver any such financial statements, which fine shall be paid upon demand as Additional Rent.

Tenant shall deliver to Landlord, not later than thirty (30) days after the end of each Lease Year and after the expiration or termination of this Lease, a complete copy of the Sales and Use Tax Return submitted to the State of Florida Department of Revenue, reflecting the amount of Gross Sales made from the Premises during such Lease Year. If Tenant shall fail to deliver any such requested financial statements within thirty (30) days of Landlord's request therefor, in addition to any other rights or remedies Landlord may have, upon fifteen (15) days' notice to Tenant, Landlord may impose on Tenant a fine in the amount of not more than One Thousand and 00/100 Dollars (\$1,000) for Tenant's failure to timely deliver any such financial statements, which fine shall be paid upon demand as Additional Rent.

(a) The term "Gross Receipts" as used herein shall be defined to mean the aggregate amount of revenue from gross sales of all business conducted in, on or from the Premises by Tenant and all other revenue in connections with all merchandise, services or other activity, whether, evidenced by cash, check, credit, charge account, exchange or otherwise and regardless of the amount or profit realized, Gross Receipts shall include but not be limited to: the amounts received from the sale of goods, wares, and merchandise, whether such sales be made by means of merchandise, vending devices, rentals, or for services performed in, on or from the Premises; the amount of all order taken or received, including mail, catalog, telephone, on-line, telegraph or other orders placed at the Premises whether such order be billed from the Premises or elsewhere; and the amount received from interest on charge accounts and other finance charges. Gross receipts shall include all sales to Tenant's employees, if nay space within the Premises shall be sublet by Tenant or conducted by any person or entity other than Tenant pursuant to this Lease, there shall be included in Gross Receipts all sales, service and any other activity generated therein. Gross Receipts shall include receipts from the sale of gift certificates at the time of sale, not at the time of redemption. Each charge or sale shall be recorded for its full amount and no deduction or offset thereto shall be permitted for trade-ins, excess allowances on trade-ins, coupons, handling charges for coupons or the equivalent. Each charge of sale upon installment or credit shall be treated as a sale for the full price in the month during such charge or sale shall be made, irrespective of the time when Tenant shall receive payment (whether full or partial) therefore and no reserve or deduction shall be allowed for uncollected or uncollectable charge accounts, bad debts or other items.

(b) Gross Receipt shall include all deposits not refunded by purchasers, all service charges for layaway sales and lottery ticket sales for the full amount of the lottery ticket price. Gross receipts shall not include transfers to other stores or returns to suppliers and shall not include sales of merchandise for which cash has been refunded or allowances made on merchandise claimed to be unsatisfactory, provided they shall have been included in gross sales and further provided such refunds or allowances are in the form of credits to customers. Gross receipts shall not include the amount of any sales, use or gross receipts tax imposed by any federal, state, municipal or other governmental authority directly on sales and collected from customers.

**7. TAXES, UTILITY AND OTHER CHARGES.** Tenant agrees to pay, at Tenant's sole expense and for its own account, the following as "Additional Rent.

(a) from and after the Effective Date until the end of the Term or earlier termination of this Lease, each and every installment of Real Property Taxes on the Premises (or attributable to the Premises, if the Premises is a part of a larger tax parcel), prorated based on actual days elapsed, if applicable, for any partial tax year during the Term. Payment of Real Property Taxes shall be made directly to the taxing authority on or before November 10<sup>th</sup> of the year for which such taxes are assessed (for example, Real

Property Taxes for the calendar year 2018 shall be paid on or before November 10, 2018) with a copy to Landlord of the remittance concurrent with such payment by Tenant. In the event such Real Property Taxes required to be paid by Tenant relate to any period of time after expiration of the term of this Lease, Tenant's share of such taxes shall be equitably prorated to cover only the period of time within the fiscal tax year during which this Lease is in effect. Tenant may, at its option, contest in good faith and by appropriate and timely legal proceedings any such tax and assessment; provided, however, that Tenant shall (i) post a bond with Landlord in the amount of the contested Real Property Taxes to secure Tenant's obligation to pay the Real Property Taxes, (ii) indemnify and hold harmless Landlord from any loss or damage resulting from any such contest, and all expenses of same (including without limitation, all attorneys' fees, court and other costs) shall be paid solely by Tenant; (iii) and comply with all other applicable obligations under Florida law to contest such taxes so that same are not considered delinquent or past due. No contest proceedings initiated by Tenant shall be conducted in such a manner as to cause a lien to arise on the Premises, the loss of the Premises through sale or forfeiture, or for the Premises to be delinquent or past due with respect to Real Property Taxes;

Real Property Tax means all taxes and assessments whatsoever, whether municipal, state, federal or otherwise, levied, imposed, assessed or charged against the Premises or upon Landlord in connection therewith or from time to time levied, imposed, assessed or charged in the future in lieu thereof or in substitution thereof or in addition to or for which Landlord is liable in connection with the Premises, but excluding from the foregoing all and any income, and any estate, gift, inheritance and/or franchise taxes, or profits' taxes upon the income of Landlord.

(b) from and after the Effective Date and thereafter during the Term of this Lease, all utility charges and rates, including, without limitation, all charges for sewer usage or rental, refuse removal, gas, water, heat, electricity, internet and/or telephone and similar taxes, rates, charges and assessments, including payments in lieu thereof, which are charged, levied or assessed in connection with the Premises, or any part thereof, and which are levied or assessed against Tenant or which would, if unpaid, become a lien on the Premises or Tenant's leasehold interest therein. Landlord shall not be liable for any interruption or failure in the supply of any such utility service to the Premises;

(c) from and after the Effective Date and thereafter during the Term of this Lease, any business taxes or license fees and similar taxes which may be charged, levied or assessed in connection with the Premises or Tenant's leasehold interest therein, which taxes or fees are properly levied or assessed against Tenant, the Premises or Tenant's leasehold interest therein;

(d) from and after the Effective Date and thereafter during the Term of this Lease, directly to the party due such costs, all charges due from the owner of the Premises under easements, restrictions or agreements of record pertaining to the Premises (including but not limited to the Declaration) and Tenant shall indemnify and hold harmless Landlord for any loss or damage resulting from Tenant's failure to pay the same; and

(e) all other charges and expenses which accrue or arise from the ownership, development, construction, operation, and repair, maintenance and replacement of the Premises or any are the responsibility of Tenant pursuant to this Lease. This Lease is intended to be a triple-net lease with respect to Landlord. The Base Rent owing hereunder is to be paid by Tenant absolutely net of all costs and expenses relating to Landlord's ownership of the Premises and is not to be reduced, offset or diminished, directly or indirectly, by any cost, charge or expense payable hereunder by Tenant.

**8. LANDLORD MAY PAY ADDITIONAL RENT.** If Tenant fails to pay when due any Additional Rent required to be paid by Tenant pursuant to this Lease and Tenant is not contesting the same by appropriate proceedings (but only as herein expressly permitted), Landlord shall have the right to



pay the same at the expense of Tenant if Tenant has still failed to pay such Additional Rent fifteen (15) days after Tenant's receipt of written notice thereof, and Tenant covenants to reimburse Landlord, as Additional Rent, for any amounts so paid by Landlord, together with interest on the amount paid by Landlord at the Interest Rate, within fifteen (15) days after expiration of such notice period.

**9. DOCUMENTS TO BE SUPPLIED BY LANDLORD.** Within three (3) days following the Effective Date of this Lease, Landlord shall deliver to Tenant: any environmental and/or engineering reports or studies, surveys, title reports, title policies or other reports relating to the Land in the possession of Landlord or its property manager or their agents (collectively, "**Landlord's Reports**").

(a) **Title and Survey.** Tenant shall have the right during the Title Review Period (as hereinafter defined) to obtain a commitment for title insurance ("**Commitment**") from Title Insurance Company ("**Title Company**") covering Tenant's leasehold estate in the amount of the value of the Land and the cost of the improvements to be constructed on the Land, together with copies of all Schedule B exception documents, liens, encumbrances and other matters affecting Landlord's title to the Land ("**Title Documents**"); and (ii) a survey ("**Survey**") of the Land in a form acceptable to Tenant.

(b) **Title Review Period.** Within forty five (45) days of the Effective Date ("**Title Review Period**"), Tenant shall deliver to Landlord written notice of any objection which Tenant may have with respect to the Commitment, Survey and/or Title Documents. The cost to obtain such Commitment, and the premium for any title insurance policy issued pursuant to the Commitment and any endorsement thereto, shall be borne by Tenant. If Tenant fails to object in writing to any items reflected in such documents within the Title Review Period, then all such items shall be deemed to be Permitted Encumbrances (hereinafter defined). If Tenant objects in writing to any of the items reflected in the Commitment, Survey or Title Documents, Landlord shall have ten (10) days ("**Title Cure Period**") following Landlord's receipt of Tenant's written objections in which to remove or cure, to Tenant's reasonable satisfaction, any matters to which Tenant has objected, provided that Landlord shall not be required to cure any matters to which Tenant has objected. If Landlord has elected to cure such items and has commenced to cure, and thereafter is diligently pursuing the cure of, such item(s) but such item(s) cannot be cured within the Title Cure Period, Tenant shall, without waiving any of its other rights under this Section, have the unilateral right to extend the Title Cure Period by written notice to Landlord until such time as the cure of such item(s) has been completed or until Tenant, in its sole discretion, determines that the item(s) cannot be cured within a period compatible with Tenant's intended use of the Land; provided however that the Title Cure Period shall not be extended beyond the expiration of the Due Diligence Period. If Landlord fails to cure such items during the Title Cure Period or Tenant has extended the Title Cure Period and thereafter determines that the item(s) cannot be cured within the extended Title Cure Period, Tenant shall have the right (i) to terminate this Lease by written notice to Landlord by the earlier of (i) ten (10) days after the expiration of the Title Cure Period (as it may have been extended) or (ii) the expiration of the Due Diligence Period, in which event the parties shall have no further rights or obligations to the other hereunder (except to the extent expressly surviving termination) or (ii) waive the objection to such matters and proceed with this Lease. In the event that Tenant has not elected to terminate this Lease during the Due Diligence Period, then subject to any New Exception, Tenant shall be deemed to have accepted the status of the title to the Premises and all such matters reflected on the Commitment shall be deemed to be Permitted Encumbrances. If Tenant elects not to terminate this Lease, Tenant may cause the Title Company to reissue from time to time during the Initial Term the Commitment prior to its expiration. Tenant shall have the right to object to any exceptions other than the Permitted Encumbrances shown on any updated Commitment (each a

"New Exception") Tenant shall object to any New Exception within five (5) business days after receipt of the updated Commitment and Landlord shall notify Tenant within five (5) business days after receipt of such notice whether Landlord elects to attempt to cure such New Exception or to not cure such New Exception. If Landlord elects to attempt to cure such New Exception, then Landlord shall have ten (10) days within which to attempt to cure such New Exception. If Landlord notifies Tenant that Landlord has not been able to cure such New Exception, or Landlord notifies Tenant that Landlord elects not to cure such New Exception, then Tenant shall have the right (i) to terminate this Lease by written notice to Landlord within five (5) days after receipt of Landlord's notice, in which event the parties shall have no further rights or obligations to the other hereunder (except to the extent expressly surviving termination) or (ii) waive the objection to such matters and proceed with this Lease. Notwithstanding anything herein to the contrary, in the event a New Exception materially and adversely affects Tenant's proposed use of the Premises as a financial institution, and the New Exception arose as a result of the affirmative acts or omission of Landlord, with the consent of Landlord, and/or at the direction of Landlord, then if Tenant exercises its right to terminate the Lease as a result of the New Exception, then Landlord shall reimburse Tenant for the actual and reasonable out of pocket costs incurred by Tenant with respect to Tenant's due diligence and pursuant of the Approvals. **"Permitted Encumbrances"** shall mean any encumbrances reflected in the Commitment and Title Documents or on the Survey to which Tenant does not object within the Title Review Period or to which any objection has been waived by Tenant.

(c) **Inspections and Approvals.** During the Initial Term, Tenant shall have the right to undertake any review or inspection of the Land that it deems necessary, including without limitation the right (i) to conduct soil, engineering, environmental and other tests with regard to the Land; investigate the availability of utilities, the applicable governmental requirements relating to signage and construction of improvements on the Land, the availability of necessary permits and licenses relating to signage and construction of any improvements; the necessity for any third party approvals, including without limitation approvals of any developer or owners' association; and determine generally the desirability and utility of the Land for Tenant's purposes; and (ii) to obtain all third party approvals (including, without limitation, the approvals of any developer or owners' association) and governmental approvals and permits (including without limitation building and signage permits) required by all regulatory agencies having jurisdiction over Tenant to authorize Tenant to construct and operate a financial institution with related signage on the Premises. All such third party approvals and regulatory approvals are referred to herein collectively as the **"Approvals."** Tenant shall have the right, at any time and for any reason during the Due Diligence Period, to terminate this Lease for any reason by delivery of written notice to Landlord, in which event and except as set forth herein, the parties shall have no further rights or obligations to the other hereunder. Tenant shall have the right, at any time during the Permitting Period to terminate this Lease for the sole reason that Tenant has failed to obtain its Approvals (or Tenant's reasonable belief that it will not be able to obtain the Approvals), in which event and except as set forth herein, the parties shall have no further rights or obligations to the other hereunder other than indemnification provisions and any other provisions hereof which expressly survive the termination of this Lease. Tenant shall promptly repair and restore all damage to the Land and indemnify, defend and hold Landlord harmless from and against all losses, claims, costs, damages, liabilities, and expenses (including but not limited to reasonable attorneys' fees and costs) arising out of or in connection with any entry upon the Land by Tenant and its agents, servants, employees and contractors, including any damage to the Premises or to any person or other real or personal property, and including the filing of any mechanics' or other statutory or common law lien or claim against the Premises or any part thereof. This duty of Tenant to indemnify, defend and hold harmless the Landlord shall survive the expiration or earlier termination of this Lease.

If Tenant does not deliver written notice to Landlord of its election to terminate this Lease prior to the expiration of the Due Diligence Period and/or Permitting Period, as applicable, then the conditions of this Section shall be deemed to have been fully satisfied, and Tenant may not thereafter terminate this Lease pursuant to this Section.

(d) **Title Policy.** If Tenant does not elect to terminate this Lease prior to the expiration of the Initial Term, Landlord shall provide the Title Company with an owner's affidavit sufficient to permit the Title Company to issue to Tenant a Leasehold Owner Policy of Title Insurance in form acceptable to Tenant covering the Land and the appurtenant easements in the amount of the value of the Land and the cost of the improvements to be constructed on the Land, with all requirements from the Commitment satisfied, showing no exceptions except those identified on the Commitment, and with the standard exceptions from the Commitment deleted.

## **10. SECURITY DEPOSIT.**

(a) Tenant shall contemporaneously with the execution of this Lease, deposit with Landlord the amount of \$\_\_\_\_\_, plus applicable sales tax (the Security Deposit) as security for the full and faithful performance by Tenant of all the terms, covenants and conditions of this Lease upon Tenant's part to be performed. The Security Deposit, to the extent all or any portion thereof is remaining at the time of the expiration or termination of this Lease, shall be returned to Tenant, provided Tenant has fully and faithfully carried out all of the terms, covenants and conditions on Tenant's part to be performed hereunder. Landlord shall have the right, but not the obligation, to apply any part of the Security Deposit to cure any default of Tenant; and, if Landlord does so, Tenant shall, upon demand, deposit with Landlord the amount so applied so that Landlord shall have the full Security Deposit on hand at all times during the Term of this Lease. Tenant's failure to pay to Landlord a sufficient amount to restore the Security Deposit to the original sum deposited within ten (10) days after receipt of demand therefor shall constitute a default hereunder. No interest shall be paid by Landlord to Tenant on the Security Deposit. In the absence of evidence satisfactory to Landlord of any assignment by Tenant of the right to receive the Security Deposit, or the remaining balance thereof, Landlord may return the Security Deposit to the original Tenant regardless of one or more assignments of this Lease.

(b) In the event of a sale or other transfer of Landlord's interest in the Premises, Landlord shall have the right to transfer the Security Deposit to the transferee. No holder of a mortgage to which the Property or any part thereof is subject shall be responsible in connection with the Security Deposit, by way of credit or payment of any rentals or otherwise, unless such mortgagee shall have actually received the Security Deposit.

(c) The Security Deposit may be commingled with other funds of Landlord. It is expressly understood that the reentering of the Premises by Landlord for any default on the part of Tenant prior to the expiration or termination of the Term shall not be deemed a termination of this Lease entitling Tenant to recover the Security Deposit.

**11. EQUIPMENT LIEN.** In addition to the security deposit above, Tenant hereby agrees to pledge as security, the Tenant's property consisting of machinery, trade equipment, business and trade fixtures, refrigeration equipment, cabinetry, countertops, tables and chairs, and other trade equipment whether presently placed or installed or hereafter placed or installed at said Premises and including substitutions, accessions, additions and replacements thereof or thereto by Tenant, subtenants of Tenant or assignees of Tenant. All rent, reasonable expenses of retaking,

holding, preparing for sale or lease, selling or otherwise disposing of Tenant's property, together with reasonable attorney's fees and court costs are secured by this agreement. Tenant represents and warrants that it is the owner of Tenant's property except for the security interest granted by this agreement. The term "Tenant's property" shall not include or be deemed to include any item now or hereinafter installed in the Premises that is an integral part of the Building, including, without limiting the generality of the foregoing, heating plants and systems and air conditioning, electrical and plumbing fixtures, and other like equipment and fixtures. All such items now or hereafter installed in the Premises by Tenant, Landlord or Tenant's sub-Tenant or Tenant's assigned belong to the Landlord upon installation. At no time will the Landlord agree to sign a Waiver from any lending institution and/or finance company regarding its rights to the "Tenant's property". In addition to Landlord's lien pursuant to Chapter 83, Florida Statutes, Tenant hereby grants to and in favor of Landlord a security interest in Tenant's right, title and interest in and to Tenant's Property during the Term, and authorizes Landlord to file and/or record any and all UCC Financing Statements and Amendments thereto as Landlord shall from time to time deem necessary in connection with such security interest. Tenant will keep Tenant's property in good condition and repair, reasonable wear and tear excepted. Tenant will permit Landlord and its agents to inspect Tenant's Property at any time without prior notice. Tenant shall be in default under this Lease if Tenant removes, replaces or sells Tenant's property without the written consent of Landlord. In addition, to all of the remedies set forth in the Lease, Landlord shall have the option to remove and store Tenant's property at the expense of Tenant or sell the same on behalf of Tenant at public or private sale in such manner as is commercially reasonable, with any proceeds thereof to be first applied to the costs and expenses, including attorney's fees, of the storage and sale and the payment of any amounts owed by Tenant under this Lease, or (b) treat the same as abandoned property and remove and claim or dispose of the same in such manner as Landlord may elect, all at the expense of Tenant.

**12. [USE ONLY IF NEGOTIATED] FEASIBILITY PERIOD.** Tenant shall have a period of \_\_\_\_\_ (\_\_\_\_) days after the Effective Date, which shall expire at 5:00 pm Winter Park, Florida time on the date set forth in a letter from Tenant to Landlord, the date in which letter shall be \_\_\_\_\_ (\_\_\_\_) days after the date the Lease is fully executed by both parties (the "Feasibility Period") within which to determine whether it will be economically and practically feasible to develop on the Premises for the Permitted Use and with related parking of the type operated by Tenant. If Tenant elects to terminate this Lease pursuant to this Section, it shall do so by giving written notice to Landlord not later than the expiration of the Feasibility Period. If Tenant does not provide written notice of its intent to terminate this Agreement on or before the expiration of the Feasibility Period, Tenant shall have elected to continue with this Lease and Tenant shall have no further right to terminate this Lease as set forth herein.

**13. USE OF THE PREMISES.**

(a) The Premises shall be solely operated for a \_\_\_\_\_ (the Permitted Use) and for no other use whatsoever under the trade name \_\_\_\_\_ (Trade Name) and for no other purpose whatsoever without the prior written consent of Landlord in Landlord's sole discretion. Tenant's use of the Premises shall comply with all applicable federal, state and municipal laws, ordinances and regulations and all, now or hereafter, recorded covenants and conditions affecting the Property. No later than the Rent Commencement Date, Tenant must open for business in at least ninety percent (90%) of the floor area of the Premises for the Permitted Use and under the Trade Name, fully stocked and staffed and thereafter shall continuously operate its business for the Permitted Use under the Trade Name during normal business hours (excluding nationally recognized holidays) for the

Term.

(b) Tenant covenants and agrees that Tenant will not use or permit, or suffer the use of the Premises, or any part thereof, for any use other than the Permitted Use, or for any act or omission which constitutes waste upon or damage to the Premises. Tenant shall, at its sole cost and expense, promptly observe and comply with all Permitted Encumbrances and provisions of law and all requirements of all governmental authorities, including federal, state and municipal authorities (including Environmental Laws), now or hereafter in force which pertain to or affect Tenant's use of the Premises or the conduct of any business in the Premises, or the making of any repairs, replacements, alterations, additions, changes, substitutions or Improvements of or to the Premises (including but not limited to the ADA), whether or not compliance therewith shall require structural or other changes in the Premises. Tenant will procure and maintain all permits, licenses, easements and other authorizations required for the use of the Premises or any part thereof then being made and for the lawful and proper installation, operation and maintenance of all equipment and appliance necessary or appropriate for the operation and maintenance of the Premises and shall comply with all easements, restrictions, reservations and other instruments of record applicable to the Premises, including, without limitation, any requirements in such instruments on behalf of the owner or occupant of the Premises to procure and maintain insurance. Tenant shall indemnify, defend and save Landlord harmless from all expenses and damages by reason of any notices, orders, violation or penalties filed against or imposed upon the Premises, or against Landlord as owner thereof, because of Tenant's failure to comply with this paragraph.

(c) Tenant will not generate, store, use, handle, discharge, or release Hazardous Substances on the Premises contrary to applicable law. Tenant agrees to save harmless, defend, and indemnify Landlord against, and compensate and reimburse Landlord for, all losses resulting from any storage, use, release or disposal of Hazardous Substances on the Premises by Tenant, including but not limited to court costs, attorney fees, fines, forfeitures, clean up expenses, repairs, loss of use of property, and all similar or dissimilar losses. This indemnity agreement shall continue in full force and effect after termination of this Lease. Hazardous Substances means and shall be interpreted broadly to include, but not be limited to, any material or substance that is defined, regulated or classified under any Environmental Law or other applicable federal, state or local laws and the regulations promulgated thereunder as (i) a "hazardous substance" pursuant to section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. ' 9601(14), the Federal Water Pollution Control Act, 33 U.S.C. ' 1321(14), as now or hereafter amended; (ii) a "hazardous waste" pursuant to section 1004 or section 3001 of the Resource Conservation and Recovery Act, 42 U.S.C. ' ' 6903(5), 6921, as now or hereafter amended; (iii) toxic pollutant under section 307(a)(1) of the Federal Water Pollution Control Act, 33 U.S.C. ' 1317(a)(1) as now or hereafter amended; (iv) a "hazardous air pollutant" under section 112 of the Clean Air Act, 42 U.S.C. ' 7412(a)(6), as now or hereafter amended; (v) a "hazardous material" under the Hazardous Materials Transportation Uniform Safety Act of 1990, 49 U.S.C. ' 5102(2), as now or hereafter amended; (vi) toxic or hazardous pursuant to regulations promulgated now or hereafter under the aforementioned laws or any state or local counterpart to any of the aforementioned laws; or (vii) presenting a risk to human health or the environment under other applicable federal, state or local laws, ordinances or regulations, as now or as may be passed or promulgated in the future. "Hazardous Substances" shall also mean any substance that after release into the environment or upon exposure, ingestion, inhalation or assimilation, either directly from the environment or directly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavior abnormalities, cancer or genetic abnormalities and specifically includes, but is not limited to, mold, asbestos,

polychlorinated biphenyls (PCBs), radioactive materials, including radon and naturally occurring radio nuclides, natural gas, natural gas liquids, liquefied natural gas, synthetic gas, oil, petroleum and petroleum-based derivatives and urea formaldehyde.

**14. LANDLORD'S WORK.** Landlord shall deliver the Premises to Tenant in its as is, where is condition, except as otherwise set forth on **Exhibit A** attached hereto and incorporated herein by reference (**Landlord's Work**). The date on which Landlord tenders delivery of the Premises to Tenant with Landlord's Work substantially completed is the Delivery Date. Landlord's Work shall be deemed to have been substantially completed notwithstanding the non-completion of (i) items of Landlord's Work which require some portion of Tenant's Work to be completed; and (ii) details of construction, mechanical adjustment, decoration or cosmetic items; provided the non-completion of any such items do not materially interfere with Tenant's use of the Premises for the Permitted Use or with the conduct of Tenant's Work. Tenant taking possession of the Premises to install fixtures or equipment, perform Tenant's Work (as described in **Exhibit B** hereof), or for any other purpose whatsoever shall be conclusive evidence against Tenant that the Premises and Landlord's Work are in satisfactory condition and acceptable to Tenant and the date of possession for shall be deemed to be the Delivery Date (and Tenant's right to terminate or abatement of Rent as set forth herein shall terminate). Any work (other than Landlord's Work) which is done by Landlord at the Premises at Tenant's request shall be at Tenant's expense, and shall be paid for by Tenant in such manner as Landlord may reasonably require (including prepayment). [Landlord shall not be required to commence Landlord's Work until the expiration of the Feasibility Period.]

**15. COMMENCEMENT AGREEMENT.** Within ten (10) days after receiving an agreement executed by Landlord, which agreement may be in the general form attached hereto as **Exhibit D**, and having confirmed the Rent Commencement Date and such other factual matters as Landlord may reasonably request, Tenant shall deliver to Landlord a fully executed original of such agreement. If Tenant fails to make such delivery to Landlord within such ten (10) day period, all information set forth in the agreement executed by Landlord and delivered to Tenant shall be deemed accurate, unless Tenant provides Landlord with written notice of its disagreement with any information set forth therein, together with its rationale for such disagreement, within such ten (10) day period.

**16. TENANT IMPROVEMENTS.**

(a) Tenant shall perform all of Tenant's Work at its sole expense. Tenant's Work shall be made in a good and workmanlike manner. All contractors and subcontractors performing any work in, on or about the Premises or providing materials, supplies or equipment therefor on behalf of Tenant, as a part of Tenant's Work or otherwise, shall be licensed and insured. Tenant, at Tenant's expense, shall obtain all permits and governmental approvals for Tenant's Work.

(b) Tenant shall be permitted to install, upon and about the Premises at any time and from time to time all trade fixtures and other personal property (hereinafter referred to as the Tenant's Property), all of which at all times shall remain the property of Tenant until the expiration of the Term of this Lease, and then shall become the property of Landlord unless Landlord elects to require Tenant to remove some or all of the Tenant's Property. Tenant shall not remove any of the Tenant's Property from the Premises unless Tenant replaces such Tenant's Property with property of equal value and utility.

(c) All Tenants Work shall be constructed by Tenant at Tenant's sole expense in

accordance with plans and specifications approved by Landlord. Tenant shall complete Tenant's Work no later than the Rent Commencement Date. Except as provided in this section, Tenant shall have the right to make any additions, alterations, changes and improvements, structural and nonstructural to the Premises and the Improvements, so long as same has been approved by Landlord in writing. Construction of all such additional Improvements (whether interior, exterior structural or nonstructural) shall be completed in a workmanlike manner and in compliance with all laws (including without limitation, the ADA), building codes and ordinances applicable thereto, and any required permits, all at Tenant's sole cost and expense.

(d) All Improvements, alterations, additions, fixtures, signs and other property within or on the Premises upon the expiration or termination of the Term, including without limitation all of the Tenant's Property, shall remain for the benefit of, and shall become the property of Landlord after the Term, provided, however that Landlord may elect to have Tenant remove any or all of the Improvements, alterations, additions, fixtures, signs and other property within or on the Premises upon the expiration or termination of the Term, including without limitation the Tenant's Property, in which event Tenant shall remove the same. Tenant shall repair any damage caused by the removal of such Improvements, alterations, additions, fixtures, equipment, signs, other property, or Tenant's Property and restore the Premises to its original condition, all in a workmanlike fashion as Landlord may direct. If Tenant shall not have removed all of the Improvements, alterations, additions, fixtures, signs, other property, or Tenant's Property which Landlord has directed Tenant to remove, Landlord may (a) remove and store the same at the expense of Tenant or sell the same on behalf of Tenant at public or private sale in such manner as is commercially reasonable, with any proceeds thereof to be first applied to the costs and expenses, including attorney's fees, of the storage and sale and the payment of any amounts owed by Tenant under this Lease, or (b) treat the same as abandoned property and remove and claim or dispose of the same in such manner as Landlord may elect, all at the expense of Tenant.

(e) Tenant shall diligently procure any permits required for the Permitted Use (provided same are not the obligation of Landlord herein) and shall arrange for availability of all utility services necessary to the Premises to the extent not a part of Landlord's Work, and Landlord agrees to reasonably cooperate in good faith as necessary in connection with Tenant's procurement of the Permits at Tenant's expense.

(f) Tenant shall, at Tenant's sole cost and expense, use reasonable diligence to commence the installation of the Improvements in a timely manner. Tenant shall be responsible for obtaining any and all permits, licenses and other governmental approvals required to complete the Improvements except as expressly provided otherwise herein or except as part of Landlord's Work and for paying for the costs associated with same. Tenant shall also provide Landlord with copies of such permits, licenses and other governmental approvals obtained by Tenant to complete the Improvements. Tenant shall be solely responsible for ensuring that the Improvements comply with the ADA and any other governmental or quasi-governmental codes, rules or regulations that apply to the Improvements. The Improvements shall be made by licensed and insured contractors, subcontractors and suppliers and performed in a good and workmanlike manner. Landlord shall have no liability for any failure of Tenant to complete the Improvements on the date specified in any in any estimate or schedule. Tenant agrees to and shall indemnify, defend and hold Landlord harmless from and against any and all claims, demands, losses, damages, costs and expenses (including reasonable attorneys' fees and expenses) or death of or injury to any person or damage to any property whatsoever arising out of Tenant's construction and installation of the Improvements and any other alterations, improvements or modifications made to the Premises by Tenant. The

provisions of this Subparagraph shall survive the expiration or earlier termination of this Lease.

(g) Tenant shall provide, at its expense, during the full Term of this Lease and any extension or renewal thereof, a sign or signs, the form, size, and placement of which shall be agreed to in writing by Landlord prior to installation by Tenant, and signage shall be harmonious to the general exterior architectural building treatment of the any building on the Premises. Such signage shall be in conformity with all applicable laws, rules and regulations and of a general character consistent with businesses of the Permitted Use in the geographic area of the Premises. Tenant shall submit for Landlord's approval, detailed drawings including measurements, colors, size of letters, type style, illumination, etc., of Tenant's proposed signage on or before [\_\_\_\_\_] days after lease execution. Upon the Rent Commencement Date, with said sign or signs in place, Tenant shall not erect, install, place or cause to be erected, installed, or placed, any additional signs, temporary signs, banners, awnings, canopies, pennants, lettering, placards, decorations or advertising media of any type on the exterior of the Premises without obtaining, on each occasion, the prior written consent of Landlord. Tenant shall have no right to erect any sign of any kind or nature which advertises a business or product other than Tenant's. All signs, and all materials placed in the windows of the Premises, shall be maintained by Tenant in such a manner so as to be sightly and in good condition and repair.

(h) [Landlord agrees to contribute to the cost of Tenant's Work as set forth on **Exhibit B-1** attached hereto and incorporated herein by reference.]

## **17. REPORTING.**

(a) Within thirty (30) days of receipt of request therefor, Tenant, and Guarantor, if any, shall deliver to Landlord, and/or any party designated by Landlord, detailed financial statements of Tenant/Guarantor, certified by Tenant/Guarantor, and a certified public accountant, financial statements for any prior years. Any such financial statement delivered by Tenant/Guarantor, may be relied upon by Landlord and by any such party.

(b) Not later than thirty (30) days after the end of each calendar month, Tenant, and Guarantor, if any, shall submit to Landlord a complete statement in such detail as Landlord reasonably requires certified by Tenant or a duly authorized officer of Tenant reflecting the full amount of Gross Sales made during the preceding month.

(c) The term Gross Sales as used herein shall mean the actual sales prices of and/or the fair market value of any other consideration received for all goods, wares and merchandise sold or leased (including gift and merchandise certificates) and all services performed by Tenant or by any subtenant, licensee or concessionaire in, at, or from the Premises (including but not limited to catalog sales or internet sales made in, at or from the Premises) whether paid by cash, check, credit, barter, layaway or otherwise, without reserve or deduction for inability or failure to collect, including, but not limited to, such sales and services (1) where the orders therefor originate in, at or from the Premises, whether or not delivery or performance is made from the Premises or from some other place, (2) sold pursuant to mail, telephone, telegraph, internet and/or other devices, automated or otherwise, whereby orders are received at, or picked up or distributed from the Premises, whether or not the same are paid for at the Premises, (3) as a result of transactions originating in, at or from the Premises, and (4) which Tenant or any subtenant, licensee or concessionaire in the normal and customary course of its business would credit or attribute to its operations at the Premises or any part thereof. Gross Sales shall also include all deposits not refunded to purchasers. Each sale upon



installment or credit shall be treated as a sale for the full price in the month during which such sale shall be made, irrespective of the time when Tenant shall receive payment therefor. The following shall not be included in Gross Sales:

(i) any exchange of merchandise between stores of Tenant where such exchange is made solely for the convenient operation of Tenant's business and not for the purpose of consummating a sale made in, at or from the Premises;

(ii) cash or credit refunds to customers on transactions otherwise included in Gross Sales;

(iii) sales of fixtures, machinery and equipment after use thereof in the conduct of Tenant's business in the Premises; and

(iv) amounts collected and paid out by Tenant for any sales tax imposed by any duly constituted governmental authority, provided such tax is both added to the selling price as a separate and distinct amount in addition to the regular price of Tenant's merchandise and paid to the taxing authority by Tenant (but not by any vendor of Tenant). No franchise or capital stock tax and no income, gross receipts or similar tax based upon income, profits or gross receipts as such shall be deducted from Gross Sales.

(d) If Tenant shall fail to timely deliver any information required by this Section, in addition to any other rights or remedies Landlord may have, Landlord may impose on Tenant a fine in the amount of not more than One Thousand and 00/100 Dollars (\$1,000.00), which fine shall be paid upon demand as Additional Rent. Notwithstanding anything herein to the contrary, no notice or cure period provided herein for any other default hereunder shall apply to tenant's obligation to deliver any information required by this Section.

**18. SUBORDINATION AND ATTORNMENT.** Tenant covenants and agrees that this Lease and the Tenant's rights hereunder shall be and is hereby made subject to and subordinate to all existing mortgages, deeds of trust, security interests and other rights of the Landlord's creditors secured by the Premises, as well as any such mortgages, deeds of trust, security interest and other rights of Landlord's creditors which may hereafter be created. The provisions of this paragraph shall be self-operative, but the Tenant covenants and agrees that it will, upon request of the Landlord, in writing subordinate its rights hereunder to the lien of any mortgage or deed of trust to any bank, insurance company or other lending institution, now or hereafter in force against the Premises, and to all advances made or hereafter to be made upon the security thereof. In the event any proceedings are brought for foreclosure or in the event of the exercise of the power of sale under any mortgage or deed of trust made by the Landlord covering the Premises, the Tenant shall attorn to the purchaser upon any such foreclosure or sale and recognize such purchaser as the Landlord under this Lease.

**19. RECORDING.** Simultaneously with the execution of this Lease, the Parties shall execute a recordable short form or memorandum of lease in substantially the form attached hereto as **Exhibit E** and by this reference made a part hereof setting forth the matters described therein, and such other non-monetary terms or provisions as may be reasonably required by either Party hereto. Such memorandum of lease shall be recorded in the appropriate public records.

**20. INDEMNITY.** Tenant shall indemnify and hold harmless Landlord and its

members, officers, employees, and agents (collectively the "Indemnified Parties against and from, and compensate and reimburse the Indemnified Parties for, any and all losses, liabilities, claims, damages, and expenses (including without limitation reasonable attorneys' fees and costs) (collectively Loses) arising from Tenant's use of the Premises or from the conduct of its business or from any activity, work, or other things done, permitted or suffered by Tenant or Tenant's agents, employees, contractors, subLandlords, concessionaires, customers, patrons and invitees in or about the Premises, and shall further indemnify and hold harmless the Indemnified Parties against and from, and compensate and reimburse the Indemnified Parties for, any and all Losses arising from any breach of or default in the performance of any obligation on Tenant's part to be performed under the terms of this Lease, or arising from any act or negligence of the Tenant, or any agent, employee, contractor, subLandlord, concessionaire, customer, patron or invitee of Tenant, and from all costs, reasonable attorney's fees, losses, and liabilities incurred in or about the defense of any such claim or any action or proceeding brought thereon, excluding however any Losses arising solely from the gross negligence or willful misconduct of Landlord. In case any action or proceeding is brought against any of the Indemnified Parties by reason of any such claim, Tenant upon notice from Landlord shall defend the same at Tenant's expense by counsel reasonably satisfactory to Landlord. Tenant, as a material part of the consideration to Landlord, hereby assumes all risk of damage to property or injury to persons in, upon or about the Premises, from any cause other than Landlord's gross negligence or willful misconduct, and Tenant hereby waives all claims in respect thereof against Landlord. The provisions of this Paragraph shall survive the expiration or earlier termination of this Lease. Neither Landlord nor its agents shall be liable for any loss or damage to persons or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water or rain which may leak from any part of the Premises or from the pipes, appliances, toilets, HVAC units or systems, or plumbing works therein or from the roof, street or subsurface or from any other place resulting from dampness or any other cause whatsoever except caused by Landlord or its agents' negligence or willful misconduct.

**21. CONSTRUCTION, ADDITIONS, ALTERATIONS OR REMODELING; CONSTRUCTION LIENS.** During the Term of this Lease, the Improvements (and any additions, alterations or modifications thereto) shall be owned by Tenant, and from the date Tenant opens for business at the Premises until the expiration of the Term of this Lease, Tenant shall not make any additions, alterations or extensions to the Premises or the Improvements now or hereafter to be erected on the Premises without approval of Landlord, which shall not be unreasonably withheld; provided that, Tenant shall not violate any of the use restrictions set forth in this Lease (including, without limitation, any contained within any Permitted Encumbrance). Tenant shall comply with all applicable laws and Permitted Encumbrances with respect to any work upon the Premises (including any initial construction, or any additions, alterations or extensions).

Subject to Tenant's right to contest liens in accordance with this Lease, Tenant shall keep the Premises free from any liens arising out of any work performed, materials furnished or obligations incurred by or on behalf of Tenant, either as part of the construction of the initial Improvements or otherwise. No construction liens shall be placed against the Landlord's title in the Premises for or on account of the construction of any Improvement upon the Premises or any repair, alterations, demolition, or removal of such Improvement, or for any other purpose, by any laborer, contractor, materialman, or other person contracting with Tenant. All laborers, mechanics, materialmen, contractors, subcontractors, and others are called upon to take due notice of this clause, it being the intent of the parties hereby to expressly prohibit any such lien against the Landlord's title or interest by the use of this language as and in the manner contemplated by Section 713.10 of the Florida Statutes. Tenant agrees to promptly pay or bond any liens, and further agrees to indemnify, defend

and save harmless the Landlord from and against any loss, cost or expense occasioned by any lien prohibited hereby, including the cost and expense of defending or removing the same, whether the claim therefore be with or without merit or valid or invalid. Further, the Tenant agrees to promptly notify any contractor making any Improvements to the Premises of the provisions of this Lease contained in this paragraph. It is the intent of this language to comply with Section 713.10 of the Florida Statutes, as amended. Tenant agrees that the Memorandum of Lease shall include the above prohibitions of liens upon the Landlord' interest in the Premises as provided in said Section 713.10.

## **22. REPAIR OF PREMISES.**

(a) Tenant shall (i) maintain the Premises (including without limitation, all buildings and Improvements including without limitation, all buildings, structures and Improvements including any parking areas, driveways, lighting, irrigation system and landscaping, whether interior, exterior, structural and otherwise) in good order and repair; (ii) not commit waste or permit impairment or deterioration of the Premises (normal wear and tear excepted); (iii) not abandon the Premises; (iv) keep all property and the equipment and systems of the Premises including trade fixtures, equipment, machinery and appliances thereon, in good repair and replace trade fixtures, equipment, machinery and appliances on the Premises when necessary to keep such items in good repair; (v) provide prompt notification to Landlord of any material adverse changes to the Premises of which Tenant becomes aware, including without limitation, material changes in any environmental condition, including the presence of contaminants such as mold, and promptly undertake reasonable remediation (and preventative) actions in connection therewith; and (vi) subject to the provisions of this Lease, return the Premises and all buildings and Improvements thereon at the expiration of the Term of this Lease or any extension thereof in as reasonably as good condition as when received. Tenant agrees that Landlord shall have no obligation under this Lease to make any repairs or replacements to the Premises or the buildings or Improvements thereon, or any alteration, addition, change, substitution or Improvement thereof or thereto, whether structural or otherwise. For purposes of this Section, the terms repair and replacement include, without limitation, the replacement of any portions of the Premises which have outlived their useful life during the term of this Lease. Landlord and Tenant intend that the Rent received by Landlord shall be absolutely net to the Landlord and shall be free and clear of any expense to Landlord for the construction, care, maintenance (including charges accruing under easement or other agreements relating to the Premises), operation, repair, replacement, alteration, addition, change, substitution and Improvement of or to the Premises and any building and Improvement thereon. Upon the expiration or termination of this Lease, Tenant shall remain responsible for, and shall pay to Landlord, any cost, charge or expense for which Tenant is otherwise responsible for hereunder attributable to any period (prorated on a daily basis) prior to the expiration or earlier termination of this Lease.

(b) Tenant shall store all garbage, trash and other waste within the Premises in leak, odor and vermin proof containers, such containers not to be visible to members of the public. If any leaking or spilling shall occur or if any goods and merchandise shall fall out of any containers or packages, Tenant shall be responsible for and shall promptly cause the same to be cleaned and removed and restore any damage that may result. Tenant shall not burn any materials or rubbish of any description within the Premises. Tenant shall maintain the adjacent walkways, streets and surrounding area free and clear of all garbage and other refuse.

(c) Tenant shall not be permitted to have any wood burning fires within the Premises. In addition, the Tenant shall not have any charcoal or any other open flame cooking facilities that do not have the smoke resulting from such fires totally controlled to the satisfaction of the Landlord and

governing authorities.

(d) In the event Tenant fails to perform any of the provisions of this Section, which failure continues for a period of thirty (30) days for non-emergency repairs after receipt of written notice from Landlord specifying the particulars of such failure (or in the event of "emergency" repairs, as such is defined below, which are not repaired immediately and which shall not require such notice), such failure shall constitute a default and Landlord may exercise the rights provided herein in the event of a default and/or may perform the obligations of Tenant specified in said notice of default and Tenant shall reimburse Landlord for the reasonable costs associated with same no later than thirty (30) days after written request. For purposes of this Section, an "emergency" necessitating repair or replacement shall be one which presents an imminent threat or danger of harm to person or property.

**23. RIGHT TO ENCUMBER PERSONALTY.** Tenant shall not, without Landlord's prior written Approval, place liens upon or give security interests in any or all of Tenant's Property, materials, supplies, inventory, books, records or other personalty, and/or the proceeds of any thereof (Personalty), erected or installed on the Premises by Tenant during the Term.

**24. ACCESS TO PREMISES.** Landlord, and any agents, employees, officers and independent contractors of Landlord, will have access to the Premises at all reasonable hours for the purpose of examining and inspecting same upon reasonable advance notice to Tenant (not less than 24 hours, except in cases of emergency).

**25. HOLDOVER.** If Tenant remains in possession of the Premises after the expiration of the Term and without executing a new written lease acceptable to Landlord and Tenant, a tenancy from month to month shall be deemed to have been created, but such possession shall not limit Landlord's rights and remedies by reason thereof nor constitute a holding over. Such tenancy, in the absence of written agreement to the contrary, shall be subject to all the terms of this Lease, except as to the Term and except that the Base Rent payable during such tenancy shall be an amount equal to two hundred percent (200%) of the Rent payable during the last month of the Term of this Lease.

Notwithstanding anything to the contrary contained in the above Paragraph, Tenant is hereby required to notify Landlord, two hundred and seventy (270) days prior to the expiration of this Lease, or any extension or renewal thereof, of its intention to vacate the Premises at the expiration of the then current term. If such notice is not received by Landlord by the date which is two hundred and seventy (270) days prior to the expiration date of the then current term, this Lease will automatically renew on a Month-to-Month basis and Tenant will pay monthly rent at the greater of the Holdover rate as specified in above the paragraph or the current market rate at the time of Lease expiration. Such monthly rent amount will begin on the first day following the expiration date and continue through and including the last day in which Tenant occupies the Leased Premises. Tenant shall, upon vacating the Premises, leave the Premises in accordance with, and pursuant to, the terms of the Lease as it would have if vacating at the natural expiration of this Lease.

**26. GOVERNMENT REGULATION.** At Tenant's expense, Tenant will comply with all laws, rules, regulations, decisions, codes, orders or ordinances of any federal, state or municipal government, or their appropriate regulatory agencies, now in force during the term of this Lease or which may hereafter be in force, relating to the carrying on of Tenant's business on the Premises.

**27. SUBORDINATION AND NON-DISTURBANCE.** Tenant may, without the

consent of Landlord, mortgage or otherwise encumber Tenant's leasehold estate (which mortgage or other encumbrance is hereinafter referred to as the Leasehold Mortgage) to secure a loan from an Institutional Mortgagee. Institutional Mortgagee means any insurance company, federal, national, or state bank or savings and loan association, pension fund, real estate investment trust, and any other generally recognized institutional lender. The mortgagee under the Leasehold Mortgage or the other holders of the indebtedness secured by the Leasehold Mortgage will notify Landlord (and any mortgagee of Landlord), in the manner provided for the giving of notice, of the execution of such Leasehold Mortgage and the name and place for service of notice upon such Leasehold Mortgagee.

This Lease is and will be subject and subordinate to any ground, overriding, or underlying leases and the rights of the landlord under those leases, to all mortgages that may now or hereafter affect the Lease or the Premises and to all renewals, modifications, consolidations, replacements, and extensions of the leases and mortgages. However, Tenant agrees that any such landlord or mortgagee will have the right at any time to subordinate its interest in any ground, overriding, or underlying lease, or mortgage, as the case may be, without Tenant's consent, by notice in writing to Tenant, and thereupon this Lease will be deemed prior to such interest without regard to their respective dates of execution, delivery, or recording, and such landlord or mortgagee will have the same rights with respect to this Lease as though this Lease had been executed before the execution, delivery, and recording of such interest had been assigned to such landlord or mortgagee. This article will be self-operative, and no further instrument of subordination will be necessary. However, in confirmation of this subordination, Tenant will execute promptly any certificate that Landlord may request. If any ground or underlying lease is terminated, or any mortgage foreclosed, this Lease will not terminate or be terminable by Tenant unless Tenant was specifically named in any termination or foreclosure judgment or final order. If any ground or underlying lease is terminated, or if the interest of Landlord under this Lease is transferred by reason or assigned in lieu of foreclosure or other proceedings for enforcement of any mortgage, or if the holder of any mortgage acquires a lease in substitution for the mortgage, or if this Lease is terminated by termination of any lease or by foreclosure of any mortgage to which this Lease is or may be subordinate, then Tenant will, at the option to be exercised in writing by Landlord under any ground or underlying lease or the purchaser, assignee, or tenant, as the case may be, (a) attorn to it and will perform for its benefit all the terms, covenants, and conditions of this Lease on Tenant's part to be performed with the same force and effect as if the landlord or the purchaser, assignee, or tenant were the landlord originally named in this Lease, or (b) enter into a new lease with the landlord or the purchaser, assignee, or tenant for the remainder of the lease Term and otherwise on the same terms, conditions, and Rent as provided in this Lease.

## **28. EMINENT DOMAIN.**

(a) At any time hereafter, if as a result of eminent domain proceedings, there should be a taking of the whole of the Premises Tenant, at its option, may terminate this Lease upon notice to Landlord and prosecute its claim for an award for damages for the termination of this Lease and its loss of its interest under this Lease caused by such appropriate or taking, together with damages based on the value of Tenant's Personalty and the Improvements erected or installed on the Premises and the damages Tenant may sustain to the business operated by Tenant on the Premises. Such claim by Tenant shall not impair any rights of Landlord for such appropriate and taking of, or the injury to, the Landlord's interest in this Lease and to or Landlord's interest in the Premises, nor reduce the award payable to Landlord.

(b) In the event that a part of the Premises shall be appropriated or condemned and (i) if

the part so taken shall include the Improvements or any material part thereof which prevents the use of the Premises for the Permitted Use; or (ii) if the part so taken shall remove more than forty percent (40%) of the land of the Premises; then, and in any such event, at any time within a period of sixty (60) days after the date when possession of the part of the Premises so taken shall be required by the appropriating or condemning authority, Tenant may elect to terminate this Lease by written notice to Landlord. In the event Tenant shall fail to timely exercise such option to terminate this Lease, or in the event that a part of the Premises shall be taken or condemned under circumstances in which Tenant shall have no such option to terminate this Lease, then and in either of such event, this Lease shall continue in full force and effect and shall terminate only as to that part of the Premises so taken. In such event, the monthly installments of Base Rent required to be paid under this Lease shall be equitably reduced and Tenant, with reasonable promptness, shall make necessary repairs to and alterations of the Improvements on the Premises for the purpose of restoring same to a functional economic architectural unit, susceptible to the same use as that which was in effect immediately prior to such taking and to the extent that such repairs are necessitated by such appropriation or condemnation.

(c) Landlord and Tenant further agree that the aggregate net award pertaining to the Premises (the Award) shall be made payable to both Landlord and Tenant and be paid and distributed as follows:

(i) First, to Landlord, a sum from the Award equal to the fair market value, immediately prior to the taking, of the fee simple title to the land area of the Premises so taken, exclusive of the Tenant's Improvements, and undiminished by the existence of the leasehold estates created by this Lease.

(ii) Second, if this Lease will not be terminated, the Award shall next be applied to the reasonable costs incurred by Tenant in completing such restoration.

(iii) Third, to Landlord, a sum from the Award based on the value of Landlord's interest in the Premises, including the "Reversionary Estate" (hereinafter defined), and considering for all purposes in making such a valuation, the existence of the Leasehold Estate (hereinafter defined) and the amount of Rent to be paid to Landlord under this Lease.

(iv) Fourth, to Tenant, a sum from the Award based on the value of Tenant's interest in the Premises, including the Leasehold Estate, and considering for all purposes in making such a valuation, the unamortized cost of the Tenant's Improvements located on the Land.

In all events, Tenant shall be entitled to any portion of the Award allocated to the cost of relocating Tenant's personal property and fixtures to another site, regardless whether or not the Lease is terminated. The term "Leasehold Estate" shall mean the rights and interests granted to Tenant under this Lease, including Tenant's cost of, and ownership during the term of this Lease of, all the Tenant's Improvements. The term "Reversionary Estate" shall mean the rights and interests of Landlord in the Premises after giving effect to the Leasehold Estate, and shall include all of Landlord's rights pursuant to this Lease. Termination of this Lease shall not affect the right of the respective parties to such awards.

**29. FIRE AND CASUALTY.** If the Premises are damaged or destroyed by fire, flood,

tornado or other element, or by any other casualty, this Lease shall continue in full force and effect and Tenant shall, as promptly as possible, restore, repair or rebuild the Premises to substantially the same condition as it existed before the damage or destruction, including any Improvements or alterations required to be made by any governmental body, county or city agency, due to any changes in code or building regulations. Tenant shall for this purpose use all, or such a part as may be necessary, of the insurance proceeds received from insurance policies required to be carried under the provisions of this Lease. If such insurance proceeds are not sufficient to pay such costs, Tenant shall pay such deficit.

### **30. ASSIGNMENT AND SUBLET.**

(a) Neither Tenant, nor any Guarantor of Tenant, shall assign its interest in this Lease or sublet all of the Premises without Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed. Landlord's failure to grant consent to any assignment or sublease of all of the Premises shall not be deemed unreasonable if (i) the proposed assignee or sublessee's tangible net worth is less than the greater of Tenant's tangible net worth as of the Effective Date or as of the date of Tenant's, and/or any Guarantor of Tenant's, request to assign the Lease, or (ii) the proposed assignee or subLandlord is not experienced in the Permitted Use. Notwithstanding the foregoing, Landlord's prior consent shall not be required for an assignment of this Lease to (a) a direct parent, direct subsidiary, affiliate, division or other entity Controlling, Controlled by, or under common Control with Tenant; (b) a successor entity related to Tenant by merger, consolidation, reorganization or governmental action. For purposes of this paragraph, Control means the ability to vote the majority of the membership interests of the party under control. Prior to any assignment or subletting hereunder (including those upon which no Landlord consent is required), and as a condition thereof, Tenant, and/or any Guarantor of Tenant, shall deliver to Landlord written notice of such assignment or subletting, together with: (i) a copy of the proposed assignment or subletting documents ( including copies of any recorded documents relating thereto); (ii) the name, address and telephone number of such assignee or sublet tenant and a designated contact person therefor; (iii) a new insurance policy and binder complying with the terms of this Lease an naming such assignee or sub-Landlord as the tenant of the Premises; (iv) the proposed assignee's or sublessee's certified financial statements; and (v) an agreement executed by such assignee or sublessee, in recordable form hereby such assignee or sub-Landlord assumes and agrees to discharge all obligations of Tenant under this Lease upon the effectiveness of such assignment or subletting.

(b) In the event of any assignment or sublease hereunder Tenant and any guarantor of this Lease shall not be released from its obligations, responsibilities and duties hereunder.

(c) Landlord shall have the right without limitation to sell, convey, transfer or assign its interest in the Premises or its interest in this Lease, and upon such conveyance being completed all covenants and obligations of Landlord under this Lease accruing thereafter shall cease, but such covenants and obligations shall run with the land and shall be binding upon the subsequent landlord or owners of the Premises of this Lease.

(d) In the event that Landlord shall consent to a sublease or assignment hereunder, Tenant, and/or any Guarantor of Tenant, shall pay to Landlord a fee of One Thousand Five Hundred Dollars (\$1,500.00) to cover administrative costs incurred by Landlord in connection with the processing of documents necessary to giving of such consent.

(e) In the event Tenant, and/or any Guarantor of Tenant, shall sell, assign, transfer, or sublet the Premises or its interest in this Lease for an amount in excess of the Base Rent stipulated herein, then Tenant, and/or any Guarantor of Tenant, shall pay to Landlord as additional rent 100% of any such rent or other consideration immediately upon receipt under any such assignments or, in the case of a sublease, Tenant, and/or any Guarantor of Tenant, shall provide Landlord with a copy of the Sublease Agreement and on the first day of each month during the term of any sublease, 100% of all rent and other consideration due from the sub tenant for such month then payable to Landlord pursuant to the provisions of this Lease for said month; provided, however Landlord shall not be responsible for any deficiency if Tenant, and/or any Guarantor of Tenant, shall assign this Lease or sublet the Premises or any part thereof any rental less than the Base Annual Rent provided for herein, Permitted Transfer.

**31. DEFAULT OF TENANT.** If (i) Tenant fails to pay when due any Rent due hereunder or any other monetary sum due Landlord as set forth herein; (ii) if Tenant fails to keep, perform or observe any of the other non-monetary covenants to be kept, observed or performed by Tenant hereunder, which failure continues for a period of thirty (30) days after written notice of such failure from Landlord to Tenant (unless such failure is of such a nature that it will require more than thirty (30) days to cure, in which case such cure period shall be extended for so long as Tenant shall commence to cure within such thirty (30) days and diligently prosecute the cure of such failure to completion, and while doing so shall continue to perform all of its monetary obligations hereunder); (iii) if Tenant shall have abandoned the Premises for a period of fifteen (15) consecutive days (even if it continues to pay Rent), then Landlord may terminate Tenant's right to possession without terminating this Lease, or may terminate this Lease, for as long as the default continues; (iv) or the making by Tenant or any guarantor of Tenant's obligations hereunder of any general assignment or general arrangement for the benefit of creditors, or (v) the filing by or against Tenant or any guarantor of Tenant's obligations hereunder of a petition to have Tenant or any guarantor of Tenant's obligations hereunder adjudged a bankrupt, or (vi) a petition for reorganization or arrangement under any law relating to bankruptcy (unless in the case of a petition filed against Tenant, the same is dismissed within sixty (60) days), (vii) or the appointment of a trustee or a receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where possession is not restored to Tenant within 30 days, or (viii) the attachment, execution or other judicial seizure of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where such seizure is not discharged within 30 days, then, in either of such events, a "Default" or an "Event of Default" by Tenant shall exist hereunder. For any breach of this Lease by Tenant, Landlord may (a) terminate this Lease and accelerate the Rent for the entire balance of the Term or any part thereof, and any costs and sheriff's or other official's commissions, and enter into the Premises, or any part thereof, either with or without process of law, and expel Tenant, or any person occupying the same in or upon the Premises, using such force as may be necessary so to do, and repossess and enjoy said Premises; Landlord not being liable in connection with any action it legally takes pursuant to this paragraph; (b) enter into possession of the Premises as agent of the Tenant and use all reasonable diligence to relet the Premises, applying rent received from any new tenant on any balance due under this Lease, and in such event, Tenant shall be responsible for no more than the balance that may then be due, should a balance exist; and Landlord not being liable in connection with any action it legally takes pursuant to this paragraph; terminate Tenant's right to possession without terminating this Lease, in which case this Lease shall continue in effect whether or not Tenant shall have abandoned the Premises and, in such event Landlord shall be entitled to recover from Tenant all damages incurred by Landlord by reason of Tenant's default including, but not limited to the cost of recovering possession of the Premises; expenses of re-letting, including necessary renovation and alteration of the Premises; reasonable attorney's fees; the worth at the time



of award by the court having jurisdiction thereof of the amount by which the unpaid Rent and other charges called for herein for the balance of the term after the time of such award exceeds the amount of such loss for the same period that Tenant proves could be reasonably avoided; and that portion of any leasing commission paid by Landlord and applicable to the unexpired term of this Lease; (c) maintain Tenant's right to possession, in which case this Lease shall continue in effect whether or not Tenant shall have abandoned the Premises and, in such event Landlord shall be entitled to enforce all of Landlord's rights and remedies under this Lease including the right to recover the Base Rent, Additional Rent, Percentage Rent (if any) and other charges as may become due hereunder less any surplus amounts collected by Landlord in re-letting the Premises; provided, in the event that Landlord re-lets all or any portion of the Premises, all rental received by Landlord from such re-letting shall be applied: first, to Landlord's reasonable costs and expenses actually incurred in connection with any such re-letting, including necessary renovation and alteration of the Premises; second, to all Base Rent and, Additional Rent, and Percentage Rent, if any, due hereunder but not paid by Tenant; and third, all other actual direct damages and expenses suffered or incurred by Landlord as a result of Tenant's Default; (d) exercise any and all other rights and remedies according to the laws of the State of Florida; and (e) Tenant hereby irrevocably waives any right to service of notice of eviction or default as may be required by this lease and/or Florida law (without limitation, a three-day notice under §83.20(2), Fla. Stat.). In the event Landlord engages legal counsel in connection with the enforcement of any of the terms and provisions of this Lease in connection with a Default, then, in addition to all other sums due from Tenant to Landlord under this Lease, Tenant shall pay to Landlord any and all attorneys' fees, and legal costs and expenses incurred by Landlord, including all fees and costs incurred in collection of the foregoing fees and costs, whether or not judicial proceedings are filed, and including on appeal and in any bankruptcy proceedings.

**32. GUARANTY.** To induce Landlord to enter into this Lease, \_\_\_\_\_, a \_\_\_\_\_ (the Guarantor, has agreed to (and if there are more than one Guarantors, jointly and severally), serve as guarantor of Tenant's liabilities and obligations hereunder for the Term, which guarantor obligations shall be as set forth pursuant to that certain Guaranty dated on or about even date herewith and incorporated herein as **Exhibit F** (the Guaranty). Guarantor's execution of the Guaranty is hereby made an express condition precedent to Landlord's obligations under this Lease.

**33. PARTIES.** All rights and liabilities herein given to, or imposed upon, the respective parties hereto, shall extend to and bind the several respective heirs, executors, administrators, successors and assigns of said parties.

**34. ASSIGNMENT BY LANDLORD; CHANGE IN OWNERSHIP.** In the event of any sale of the Premises by Landlord, Landlord shall be and is hereby entirely freed and relieved of all liability under any and all of its covenants and obligations in or derived from this Lease arising out of any act, occurrence or omission occurring after the consummation of such sale; and the purchaser, at such sale or any subsequent sale of the Premises shall be deemed, without any further agreement between the parties or their successors in interest or between the parties and any such purchaser, to have assumed and agreed to carry out any and all of the covenants and obligations of the Landlord under this Lease arising from and after the date of such sale.

**35. NOTICE.** All notices required to be sent under this Lease shall be in writing and shall be deemed to have been duly given or made as of (i) the date delivered if personally delivered, (ii) the date sent if mailed by registered or certified mail (postage prepaid, return receipt requested) or overnight carrier or (iii) the date received if transmitted by fax machine or e-mail to the other party as

evidenced by a fax confirmation or an e-mail delivery receipt, in all cases to the respective parties addressed as follows (or to such other address as either party shall later designate by written notice to the other):

If intended for Tenant:

With a required copy to:

If intended for Landlord:

**36. CAPTIONS AND SECTION NUMBERS.** The captions and section numbers appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such sections of this Lease.

**37. BROKER'S COMMISSION.** Landlord represents to Tenant that Landlord has not dealt with any real estate broker in connection with this transaction other than \_\_\_\_\_ ("Brokers"), that there are no claims for brokerage commissions or finder's fees in connection with the execution of this Lease other than from Brokers, and each party shall indemnify, defend and save harmless the other party from and against all claims for any such charges or commissions made by anyone other than the Brokers and arising from the indemnifying party's actions. Landlord shall be solely responsible to pay any brokerage commissions and fees to Brokers arising from this Lease. However, notwithstanding any of the foregoing, Landlord and Tenant hereby mutually agree that in the event Tenant engages any broker to negotiate renewals, extensions, or expansions, in any of Landlord's existing properties at the time of such negotiation, Tenant will be responsible for paying any and all brokers fees associated with such renewal, extension, or expansion and shall hold Landlord harmless for any claims brought by said Broker.

**38. PARTIAL INVALIDITY.** If any term, covenant or condition of this Lease or the application thereof to any person or circumstances shall be invalid or unenforceable, the remainder of this Lease or the application of such term, covenant or condition to persons or circumstances other than those as to whom it is held invalid or unenforceable shall not be affected thereby and each term, covenant or condition of this Lease shall be valid and be enforceable to the fullest extent permitted by law.

**39. RECORDING.** Neither this Lease nor any memorandum of lease or short form lease shall be recorded by Tenant, but Landlord may elect to record a short form or memorandum of this Lease, in which case Tenant shall promptly execute, acknowledge and deliver the same on a form prepared by Landlord or such Lender.

**40. NO AGENCY.** Nothing contained herein shall be deemed by the parties hereto, or by any third party, as creating a relationship of principal and agent, or of partnership, or of joint venture between the parties. Neither the method of computation of Rent nor any other provision contained herein nor any acts of the parties shall begin to create any relationship between the parties except the relationship of landlord and tenant.

**41. ESTOPPEL.** Tenant agrees at any time and from time to time, not later than ten (10) days following written request by Landlord, to execute, acknowledge and deliver to the requesting party a statement in writing directed to such party as is directed by the requesting party certifying that: (i) this Lease is unmodified and is in full force and effect (or if there have been modifications,

that the same is in full force and effect as modified, and stating the modifications); (ii) that there have been no defaults thereunder by the requesting party (or if there have been defaults, setting forth the nature thereof); (iii) the date to which the Rent and other charges have been paid, in advance, if any; (iv) the amount of Rent and other charges then being paid pursuant to the terms hereof; and (v) such other information as shall be reasonably requested by Landlord. It is intended that any such statement delivered pursuant to this Section may be relied upon by any prospective purchaser or mortgagee of all or any portion of Landlord's interest herein, or mortgagee of all or any portion of Tenant's interest herein or any permitted assignee of Tenant's interest hereunder.

## **42. INSURANCE**

(a) Beginning on the Effective Date, Tenant shall maintain and keep in effect throughout the Term of this Lease insurance on an occurrence basis against claims for personal injury (including death) and property damage arising from occurrences on or in the Premises, with broad form contractual liability coverage, under a policy or policies of commercial general liability insurance, with such limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate, with umbrella or excess liability coverage of \$5,000,000 and such insurance shall name Landlord and Landlord's mortgagee as an additional insured as their interests may appear thereunder.

(b) Beginning upon completion of the Tenant Improvements, Tenant shall keep the Tenant Improvements insured against loss or damage by fire and the other perils covered under a standard "All Risk" or "Special Form" policy of insurance, insuring loss or damage to the Tenant Improvements in the amount of the full replacement value of the Tenant Improvements.

(c) Beginning on the Rent Commencement Date, employer's liability insurance with a minimum limit of \$1,000,000 bodily injury by accident each employee, bodily injury by disease each employee and statutory worker's compensation insurance;

(d) Beginning on the Commencement Date, automobile liability insurance for all vehicles, including owned, non-owned and/or hired vehicles with a minimum liability in an amount not less than \$2,000,000 per occurrence;

(e) Beginning upon completion of Tenant Improvements, broad form boiler and machinery insurance on all equipment and pressure-fired vehicles or apparatus situate on the Premises, and providing for full repair and replacement cost coverage;

(f) Beginning on the Commencement Date, builder's risk insurance during the making of any alterations or improvements to the Premises, and during such time each contractor shall maintain workers compensation insurance in the statutorily required amount;

(g) Beginning on the Rent Commencement Date, if liquor, wine or beer is ever sold at the Premises, liquor liability insurance in an amount of not less than \$5,000,000 per occurrence;

(h) Beginning on the Rent Commencement Date, "All risk" coverage insurance providing coverage in an amount sufficient to permit the payment of Rent, taxes, insurance and other amounts payable hereunder for a period of not less than twelve (12) months.

(i) Such other form of insurance as Landlord's mortgagee may require or as may be required by law, including without limitation, coverage for acts of terrorism and special coverage of

endorsements for mold and mold related damage to the Premises.

All insurance companies providing the coverage required under this Section shall be rated A-/X or better by Best's Insurance Rating Service (or equivalent rating service if not available), shall be licensed to write insurance policies in the state in which the Premises is located, and shall be acceptable to Landlord in Landlord's reasonable discretion. Tenant shall provide Landlord with evidence of all policies or certificates of such coverage for the insurance coverages referenced in this Section. All commercial general liability and umbrella liability or excess liability policies shall be endorsed to name Landlord and any mortgagee designated by Landlord as an additional named insured as its interest may appear. Any such coverage for additional insureds shall be primary and non-contributory with any insurance carried by Landlord or any other additional insured hereunder. All property insurance policies shall name Landlord and its mortgagee as loss payee as their interests may appear. All policies shall require delivery of written notice to Landlord and its mortgagee at least thirty (30) days before any cancellation of such insurance shall become effective.

**43. WAIVER OF SUBROGATION.** Notwithstanding anything set forth in this Lease to the contrary, the Parties, to the fullest extent permitted by law, do each hereby waive any and all rights of recovery, claim, action or cause of action against each other and their respective officers, directors, partners, employees, agents and contractors for any loss or damage that may occur to the Premises or any additions thereto or any contents therein (including the Personalty), by reason of fire or any of the other perils insured by either Party, and/or required to be insured hereunder, or for which Landlord or Tenant (as the case may be) may in fact be reimbursed as a result of insurance coverage in effect with respect to any loss suffered by either Party, regardless of cause or origin, including without limitation the negligence of Landlord or Tenant or their respective permittees, to the extent such loss or damage is covered by valid and collectible insurance in effect at the time of such loss or damage. Any and all fire and other casualty insurance policies carried by either Party covering the Premises, the Improvements or any portions thereof, or the Personalty, shall waive any right on the part of the insured against the other Party and its officers, directors, partners, employees, agents, contractors, invitee and licensees for damage to or destruction of any buildings or other Improvements located thereon, or to the Personalty, resulting from the acts, omissions or negligence of the other Party or its officers, etc. and contain a waiver of subrogation by the insurer against the other Party.

**44. CONFIDENTIALITY.** Tenant agrees to keep the financial terms of this Lease strictly confidential and to not disclose, and to prevent its principals, officers, directors, agents, employees, lenders, accountants and attorneys, from disclosing, any such terms. The disclosure of such information to any person shall constitute a material breach of this Lease; provided, however, the following shall be excluded from the definition of confidential information: (a) information which is or becomes generally known to the public through no violation of this Lease; and (b) information which has been or hereafter is lawfully obtained by Tenant from a source other than Landlord (or any of its affiliates or their respective officers, directors, employees, equity holders, or agents) so long as, in the case of information obtained from a third party, such third party was or is not, directly or indirectly, subject to an obligation of confidentiality owed to Landlord or any of its affiliates at the time such confidential information was or is disclosed to Tenant. In addition, Tenant shall be permitted to disclose confidential information to the extent, but only to the extent, required by law; provided, that prior to making any such disclosure, Tenant shall notify Landlord of the same, and Landlord shall have the right to participate with Tenant in determining the amount and type of confidential information of Landlord, if any, which must be disclosed in order to comply with applicable law. In the event of a violation of any confidentiality requirement of this Lease, Tenant

shall be obligated to pay to Landlord the amount of Five Thousand and 00/100 Dollars (\$5,000.00) as liquidated damages for such violation. The parties agree that the actual damages Landlord will incur from such a violation are impossible to determine as of this date; and that the foregoing liquidated damages constitute a reasonable estimate of those damages; and that such damages do not constitute a penalty.

**45. INDEMNIFICATION.** Tenant shall indemnify Landlord against, and hold Landlord harmless from, all claims, liabilities, demands or causes of action, including all expenses incidental thereto, for damage to property or injury to or death of any person to the extent arising from or out of (i) the conduct or management of the business conducted by Tenant on the Premises, (ii) any default on the part of Tenant in the performance of any covenant or agreement on the part of Tenant to be performed pursuant to the terms of this Lease, or (a) Tenant's negligent or willful act or omission or the negligent or willful act or omission of Tenant's employees, contractors, or agents. The indemnities contained in this Section shall survive the expiration or termination of this Lease.

**46. MISCELLANEOUS.**

(a) The parties agree that this Lease may be transmitted between them by facsimile machine. The parties intend that faxed signatures constitute original signatures and that a faxed Lease containing the signature (original or faxed) of all the parties is binding on the parties.

(b) This Lease may be signed in one or more counterparts, each of which will constitute an original and all of which together shall comprise the entire Lease. The parties mutually participated in the drafting of this Lease and no rules of construction against the drafter of this Lease shall apply in any interpretation or enforcement of this Lease or any documents executed pursuant hereto.

(c) This Lease shall be governed by and construed in accordance with the laws of the jurisdiction in which the Premises is located.

(d) Except as may otherwise be expressly provided, there shall be no further liability hereunder between the parties upon the termination of this Lease, except for liabilities arising prior to the date of such termination.

(e) If any provision of this Lease is held invalid or unenforceable in any jurisdiction, such provision, shall, as to that jurisdiction, be ineffective to the extent of such invalidity or unenforceability without in any manner affecting the validity or enforceability of such provision in any other jurisdiction or the remaining provisions of this Lease.

(f) Time is of the essence in this Lease.

(g) Landlord and Tenant each shall be excused from the performance of any of their non-monetary obligations for the period of any delay resulting from any cause beyond its control, including, without limitation, all labor disputes, governmental regulations or controls, fires or other casualties, inability to obtain any material or services or acts of God; subject to any express provision in this Lease stating that force majeure shall not excuse a delay; and provided that force majeure shall not postpone the obligation to the payment of money by Tenant hereunder.

(h) Any time period provided for in this Lease which ends on a Saturday, Sunday or

Federal Banking holiday shall extend to 5:00 P.M. (EST) on the next day that is not either a Saturday, Sunday or Federal Banking holiday.

(i) In accordance with the requirements of Florida Statutes, Section 404.056, the following notice is hereby given: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from the public health department of the county in which the Premises is located.

(j) The laws of the State of Florida shall govern the interpretation, validity, and performance and enforcement of this Lease.

**47. ENTIRE AGREEMENT.** This Lease, and the exhibits attached hereto and forming a part hereof, set forth all the covenants, promises, agreements, conditions and understandings between Landlord and Tenant concerning the Premises. There are no covenants, promises, agreements, conditions or understandings, either written or oral, between the parties other than as herein set forth. No subsequent alteration, amendment, change or addition to this Lease shall be binding upon Landlord or Tenant unless reduced to writing and signed by both parties

**48. WAIVER OF RIGHTS.** No failure or delay by Landlord or Tenant to exercise any right or power given it or to insist upon strict compliance by the other with any obligation imposed on it, and no custom or practice of either Party hereto at variance with any term hereof shall constitute a waiver or a modification of the terms hereof by Landlord or Tenant or any right either Party has herein to demand strict compliance with the terms hereof by the other.

**49. ATTORNEYS' FEES.** If either Party brings or commences any legal action or proceeding to enforce any of the terms of this Lease (or for damages by reason of an alleged breach of this Lease), the prevailing Party in any litigation between the Parties shall be entitled to recover, as a part of its judgment, reasonable attorneys' fees and costs of suit, including without limitation such fees and costs incurred in establishing the right to recover such fees and costs and the amount to be recovered.

**50. EXCULPATION.** Neither Landlord nor any member in Landlord, nor any director, officer or other party with interests in Landlord or any such member shall be subject to personal liability for any matter whatsoever arising out of or in connection with this Lease or the Premises. Except to the extent recourse shall be further limited by the other terms of this Lease, Tenant shall look solely to the interest of Landlord in the Premises (subject to the rights of tenants under the Existing Leases) for the satisfaction of the remedies of Tenant for any such matters. Nothing in this Section shall be construed to impose liability on Landlord which is waived or otherwise limited by the other terms of this Lease.

**51. PATRIOT ACT.** As an inducement to Landlord to enter into this lease, Tenant hereby represents and warrants that: (i) Tenant is not, nor is it owned or controlled directly or indirectly by, any person, group, entity or nation named on any list issued by the Office of Foreign Assets Control of the United States Department of the Treasury (AOFAC@) pursuant to Executive Order 13224 or any similar list or any law, order, rule or regulation or any Executive Order of the President of the United States as a terrorist, Specially Designated National and Blocked Person or other banned or blocked person (any such person, group, entity or nation being hereinafter referred to

as a Prohibited Person); (ii) Tenant is not (nor is it owned, controlled, directly or indirectly, by any person, group, entity or nation which is) acting directly or indirectly for or on behalf of any Prohibited Person; and (iii) neither Tenant nor any person, group, entity or nation which owns or controls Tenant, directly or indirectly, has conducted or will conduct business or has engaged or will engage in any transaction or dealing with any Prohibited Person, including without limitation any assignment of this Lease or any subletting of all or any portion of the Premises or the making or receiving of any contribution of funds, goods or services to or for the benefit of a Prohibited Person. In connection with the foregoing, it is expressly understood and agreed that (y) any breach by Tenant of the foregoing representations and warranties shall be deemed a default by Tenant not subject to any cure period and (z) the representations and warranties contained in this Section shall be continuing in nature and shall survive the expiration or earlier termination of this Lease.

**52. DUE AUTHORIZATION.** Tenant warrants that it has full power, authority and legal right to execute and deliver this Lease, and to keep and observe all of the terms and provisions of this Lease on its part to be observed and performed; and that this Lease is its valid and enforceable obligation. The undersigned individual signing this Lease on behalf of Tenant represents and warrants that his or her entering into this Lease on behalf of Tenant has been duly and validly authorized by Tenant by all necessary proceedings.

**53. SOLE REMEDY.** If Tenant shall request Landlord's consent or approval pursuant to any of the provisions of this Lease or otherwise, and Landlord shall fail or refuse to give, or shall delay in giving, such consent or approval, Tenant shall in no event make, or be entitled to make, any claim for damages (nor shall Tenant assert, or be entitled to assert, any such claim by way of defense, set-off or counterclaim) based upon any claim or assertion by Tenant that Landlord unreasonably withheld, delayed or conditioned its consent or approval, and Tenant hereby waives any and all rights that it may have from whatever source derived, to make or assert any such claim. Tenant's sole remedy for such failure, refusal or delay shall be an action for a declaratory judgment, specific performance or induction, and such remedies shall be available only in those instances where Landlord has expressly agreed in writing not to unreasonably withhold, delay or condition its consent or approval or where, as a matter of law, Landlord may not unreasonably withhold, delay or condition the same.

\*\*\*\*SIGNATURE PAGE FOLLOWS\*\*\*\*

IN WITNESS WHEREOF the parties hereto have caused this Land Lease Agreement to be executed the dates set forth below.

LANDLORD:

By: \_\_\_\_\_  
Mary L. Demetree, Manager

Date: \_\_\_\_\_

TENANT:

By: \_\_\_\_\_  
[Name & Title]

Date: \_\_\_\_\_



**EXHIBIT A**  
**PREMISES**  
[See attached]

**EXHIBIT B**

**TENANT'S WORK**

**SECTION 1**

**TENANT'S PLANS AND SPECIFICATIONS**

Tenant's Work shall be performed in accordance with Tenant's plans approved in writing by Landlord ("Tenant's Plans") [and in accordance with the plans attached hereto as **Exhibit "B-1"** attached hereto and incorporated herein by reference.] Tenant shall provide Landlord with a detailed budget containing the estimated costs and expenses to be incurred for the completion of the Tenant Plans (in a form and substance reasonably acceptable to Landlord) (the "Budget"), subject to reasonable adjustment by Landlord, Tenant, and Tenant's contractor throughout the construction of Tenant Work. The Budget shall include a management fee of five percent (5%) of the total estimated cost to be incurred in completion of the Tenant Plans (the "Management Fee") for Landlord's work in supervision and management of construction Tenant's Work, which fee shall be paid by Tenant to Landlord concurrent with each payment by Landlord of the Tenant Improvement Allowance (defined below) and, to the extent the Management Fee is payable after depletion of the Tenant Improvement Allowance, upon completion of construction.

**[SECTION 2  
FINANCIAL]**

2.01 [As long as Tenant has duly kept and performed all terms and conditions to be kept and performed by Tenant under the Lease and this Tenant Work Letter, Landlord agrees to reimburse Tenant the maximum amount of (i) \_\_\_\_\_ (\$ \_\_\_\_\_) per square foot (\$ \_\_\_\_\_) toward the cost of Tenant's Work (the "Tenant Improvement Allowance"), which shall be solely used to install and complete Tenant's Work as set forth in the approved Tenant Plans and shall solely be used to reimburse Tenant's actual out of pocket costs paid to unrelated third parties. Tenant's written request for the Tenant Improvement Allowance shall include a certificate under oath describing the total costs expended in connection with the Tenant Improvements, copies of reasonable evidence of the applicable costs and expenses expended by Tenant in connection with the Tenant Improvements, the final Certificate of Occupancy for the Tenant Improvements together with a Final Contractor's Affidavit from the General Contractor and Waivers and Releases of Lien Upon Final Payment in accordance with F.S. 713.20 from each lienor including every provider of labor, materials or supplies to the Tenant Improvements, and reasonable evidence that Tenant has opened for business at the New Premises. In no event shall all or any portion of the Tenant Improvement Allowance be applied toward the cost or expense of Tenant's personal property, trade fixtures, signs or architect fees. If the cost of Tenant's Work exceeds the Construction Allowance, such excess amount shall be borne solely by Tenant. Landlord shall pay the Construction Allowance to Tenant by offsetting [\_\_\_\_ percent (\_\_\_%)] of Tenant's monthly payments of Base Rent due and payable under the Lease commencing on the Rent Commencement Date and continuing until the Construction Allowance is paid in full. The cost of any additional work performed by Landlord for the benefit of Tenant as well as any rentals due and owing under this Lease shall be deducted from the Construction Allowance before the Construction Allowance is paid to

Tenant. If Tenant is in default under this Lease (including but not limited to its obligation to commence doing business at the Premises on or before the Rent Commencement Date and to continuously operate at the Premises for the Term), or any condition has occurred which, with the giving of notice, the passage of time, or both, would constitute a default by Tenant hereunder, then for so long as such default (or potential default) is continuing Landlord shall not be obligated to pay Tenant the Construction Allowance. If, at any time during the Term, Landlord terminates this Lease and Tenant's right to possession of the Premises pursuant to any right to do so hereunder, Tenant shall pay to Landlord (in addition to any damages recoverable by Landlord pursuant to this Lease) the unamortized cost of the Construction Allowance, amortized on a straight-line basis over the Term.]

### **SECTION 3 CONSTRUCTION OF IMPROVEMENTS**

3.01 The general contractor shall be chosen by Tenant and approved by Landlord. All other subcontractors, suppliers, architects and other consultants utilized by Tenant to do any Tenant's Work referenced herein shall be approved by Landlord in Landlord's commercially reasonable discretion. No contractors, subcontractors, suppliers, architects and other consultants shall be utilized without the prior written approval of Landlord as provided herein.

3.02 No later than five (5) business days after the Delivery Date, Tenant shall, at Tenant's sole cost and expense, use reasonable diligence to commence the Tenant's Work in a timely manner. Tenant shall obtain Landlord's written approval of the Tenant Plans prior to applying for any required permits or licenses for the Tenant Plans and prior to beginning construction of the Tenant's Work. The approval by Landlord of the Tenant Plans shall not constitute the assumption of any liability on the part of the Landlord for their compliance or conformity with any legal requirements and the requirements of the Lease, nor shall the approval of Landlord of the Tenant Plans constitute a waiver by Landlord of the right thereafter to require Tenant to amend the same to provide for any corrections or admissions by Tenant of items required by any legal requirements or the Lease which are later discovered by Landlord. Tenant shall be responsible for obtaining any and all permits, licenses and other governmental approvals required to complete the Tenant's Work and paying for the costs associated with same. Tenant shall also provide Landlord with copies of such permits, licenses and other governmental approvals obtained by Tenant to complete Tenant's Work. Tenant shall be solely responsible for ensuring that the Tenant's Work complies with the Americans with Disabilities Act ("ADA") and any other governmental or quasi-governmental codes, rules or regulations that apply to the Tenant's Work. Tenant's Work shall be made by licensed and insured contractors, subcontractors and suppliers and performed in a good and workmanlike manner. All materials used shall be of a quality comparable to or better than those in the Premises and shall be in accordance with the Tenant Plans approved by Landlord.

3.03 If Tenant shall require any changes to the Tenant Plans, Tenant shall request such change in writing to Landlord and such request will be accompanied by all plans and specifications at Tenant's expense necessary to show and explain changes from the approved Tenant Plans. Upon Landlord's approval of Tenant's requested changes, Tenant shall have revised working drawings prepared.

3.04 Except as otherwise set forth in the Lease, Landlord shall have no liability for any failure of Tenant to complete Tenant's Work on the date specified in any in any estimate or schedule.

3.05 Tenant agrees to and shall indemnify, defend and hold Landlord harmless from and against any and all claims, demands, losses, damages, costs and expenses (including attorneys' fees and expenses) or death of or injury to any person or damage to any property whatsoever arising out of Tenant's construction and installation of the Tenant Improvements and any other alterations, improvements or modifications made to the Premises by Tenant. The provisions of this Subparagraph shall survive the expiration or earlier termination of this Lease.

**EXHIBIT B-1**

**DESCRIPTION OF TENANT'S WORK**

Tenant's Work shall conform to all applicable governing codes and shall include, but not be limited to, the following:

[See plans attached]

**EXHIBIT C**

**LANDLORD'S WORK**

[See plans attached]

**EXHIBIT "D"**

**COMMENCEMENT AGREEMENT**

THIS AGREEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_, by and between \_\_\_\_\_, a \_\_\_\_\_ (the "Landlord"), and \_\_\_\_\_, a \_\_\_\_\_ (the "Tenant").

WITNESSETH:

WHEREAS, Landlord and Tenant have entered into that certain Lease Agreement dated \_\_\_\_\_, 201\_\_ (the "Lease"), for premises located at \_\_\_\_\_ (as more fully described in the Lease, the "Premises").

WHEREAS, Landlord and Tenant wish to set forth their agreement as to the commencement of the Term of the Lease and related matters.

NOW, THEREFORE, in consideration of the Premises as described in the Lease and the covenants set forth therein, Landlord and Tenant agree as follows:

1. The Delivery Date for the Premises was \_\_\_\_\_.
2. The Tenant opened for business from the Premises on \_\_\_\_\_.
3. The Initial Term of the Lease commenced on \_\_\_\_\_.
4. The Rent Commencement Date under the Lease is \_\_\_\_\_.
5. The Initial Term of the Lease shall expire on \_\_\_\_\_, 20\_\_\_. Tenant has \_\_\_\_\_( ) option(s) to extend the term for consecutive periods of \_\_\_\_\_ years each, which may be exercised in accordance with the terms of the Lease.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

TENANT

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

LANDLORD:

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

[Signature Page to Commencement Agreement]



**EXHIBIT "E"**

**FORM OF MEMORANDUM OF LEASE**

**This instrument was prepared by and should be returned to:**

DEMETREE REAL ESTATE SERVICES, INC.  
Attn: Property Management Administrator  
941 W. Morse Blvd., Suite 315  
Winter Park, FL 32789

**MEMORANDUM OF LEASE**

**THIS MEMORANDUM OF LEASE** is entered into as of the Effective Date (as set forth below), between \_\_\_\_\_, a \_\_\_\_\_, having an address of \_\_\_\_\_ (the "**Landlord**") and \_\_\_\_\_, a \_\_\_\_\_, having an address of \_\_\_\_\_, Attn: \_\_\_\_\_ (the "**Tenant**"), to be placed upon the Public Records of \_\_\_\_\_ County, Florida, and give notice of the Lease (as described below) between the Landlord and Tenant. Capitalized terms used but not defined herein shall have the meaning set forth in the Lease.

Pursuant to that certain Ground Lease Agreement dated \_\_\_\_\_, \_\_\_\_\_ (the "**Effective Date**") between Landlord and Tenant ("**Lease**"), all of which provisions are specifically made a part hereof as fully and completely as if set out in full herein, Landlord leases to Tenant and Tenant leases from Landlord those certain Premises described on **Exhibit "A"** hereto together with all rights of ingress and egress and all other rights, easements and appurtenances pertaining to said Premises, all of which rights are more particularly described in the Lease. In addition, Landlord and Tenant do hereby give notice of the following additional terms and provisions contained in the Lease:

**TERM OF LEASE:**

The Term shall begin on the Effective Date and shall end on the last day of the \_\_\_\_\_ (\_\_\_\_\_) Lease Year.

**CONSTRUCTION LIENS (F.S. 713.10 NOTICE):**

The Lease contains the following language:

No construction liens shall be placed against the Landlord's title in the Premises for or on account of the construction of any improvement upon the Premises or any repair, alterations, demolition, or removal of such improvement, or for any other purpose, by any laborer, contractor, materialman, or

Exhibit E-1

Tenant's Initials \_\_\_\_\_

other person contracting with Tenant. All laborers, mechanics, materialmen, contractors, subcontractors, and others are called upon to take due notice of this clause, it being the intent of the parties hereby to expressly prohibit any such lien against the Landlord's title or interest by the use of this language as and in the manner contemplated by Section 713.10 of the Florida Statutes.

All parties are further given notice of the terms and conditions set forth in the Lease in addition to those described above. Copies of the Lease are in the possession of the Landlord and Tenant. The terms and conditions of said Lease are by this reference incorporated herein and made a part hereof.

*[Signatures Appear on the Following Pages]*

Exhibit E-2

Tenant's Initials \_\_\_\_\_

**IN WITNESS WHEREOF**, the Landlord and the Tenant have executed this Memorandum of Lease as of the Effective Date set forth above.

Signed, sealed and delivered  
in the presence of:

**LANDLORD:**

\_\_\_\_\_,  
a \_\_\_\_\_

By: \_\_\_\_\_  
Mary L. Demetree, Manager

Taxpayer ID: \_\_\_\_\_

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_, by \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_,  
a \_\_\_\_\_, on behalf of the company, who is personally known to me or has produced  
\_\_\_\_\_ (type of identification) as identification.

(NOTARY SEAL)

\_\_\_\_\_  
Signature of Notary  
Print Name:  
Notary Public, State of \_\_\_\_\_,  
County of \_\_\_\_\_

*[Signatures continue on the following page]*

[Signatures Continued from Previous Page]

Signed, sealed and delivered  
in the presence of:

**TENANT:**

\_\_\_\_\_,  
a \_\_\_\_\_

By: \_\_\_\_\_  
[Name & Title]

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
20\_\_, by \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_, a  
[\_\_\_\_\_, on behalf of the company, who is personally known to me or has  
produced \_\_\_\_\_ (type of identification) as identification.

(NOTARY SEAL)

\_\_\_\_\_  
Signature of Notary  
Print Name:  
Notary Public, State of \_\_\_\_\_,  
County of \_\_\_\_\_

**\*\*\*NOTE – ATTACH EXHIBIT A (LEGAL OF PREMISES) PRIOR TO EXECUTION**

**EXHIBIT "F"**

**ABSOLUTE AND UNCONDITIONAL GUARANTY**

THIS ABSOLUTE AND UNCONDITIONAL GUARANTY ("Guaranty") is executed and delivered this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by \_\_\_\_\_, and \_\_\_\_\_ (hereinafter, collectively, "Guarantor") in favor of \_\_\_\_\_, ("Landlord").

R E C I T A L S:

A. Landlord and \_\_\_\_\_, a \_\_\_\_\_ entered into that certain Ground Lease dated of even date herewith, (the "Lease"), for that certain premises located at \_\_\_\_ (the "Premises").

B. In consideration of and as a material inducement to the Landlord's to enter into the Lease, Guarantor has agreed to execute and deliver to Landlord this Guaranty.

E. Guarantor acknowledges that Landlord would not have entered into the Lease without the execution and delivery by Guarantor of this Guaranty.

NOW THEREFORE, In consideration of these presents, and in further consideration of the sum of Ten and 00/100 Dollars (\$10.00) in hand paid to the Guarantor by Landlord, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed as follows:

1. Guarantor irrevocably and unconditionally guarantees payment when due, whether by acceleration or otherwise, of all amounts due under the Lease, together with all interest thereon and all attorneys' fees, cost and expenses of collection incurred by the Landlord in collecting such amounts, and does also irrevocably and unconditionally guarantee the performance by Tenant of all the duties and obligations to be performed by Tenant under the terms of the Lease. This is a guarantee of payment and not of collection.

2. Guarantor shall have no right of subrogation whatsoever with respect to the amounts owed by the Tenant to the Landlord unless and until Landlord shall have received full payment of all the amounts due under the Lease through the end of the term thereof.

3. The obligations of Guarantor hereunder shall not be released, discharged, impaired, modified or in any way affected by reason of:

(a) The unenforceability, non-existence, or invalidity of any of the terms of the Lease.

(b) The modification or other change of any terms of all or any part of the Lease, any renewal thereof and any other indulgence with respect thereto, and any release, compromise or settlement with respect to the Tenant or any Guarantor.

(c) The financial condition of the Tenant or any guarantor with may have changed or may hereafter change.

(d) Any understanding or agreement that any other individual or entity was or is

Exhibit F-1

Tenant's Initials \_\_\_\_\_

to execute this Guaranty.

(e) The death, insolvency or bankruptcy of the Tenant or any other Guarantor, or the failure of the Landlord to file a claim against the estate of any such deceased or bankrupt party for such party's liability or obligation to the Landlord.

(f) Any default by the Tenant under the Lease, whether or not notice of any such default is given to Guarantor.

(g) Any failure, omission, delay or lack of diligence on the part of Landlord to enforce, assert or exercise any right, remedy, power or privilege of the Landlord under the Lease.

(h) Any claim (including, but not limited to a counterclaim) that Guarantor or any other individual or entity may have against the Landlord.

(i) Any other event, circumstance or condition, whether or not the Guarantor shall have notice or knowledge thereof.

4. Guarantor hereby waives all notice of acceptance of this Guaranty, notice of maturity, payment or default, and any other requirement or notice necessary to bind Guarantor hereunder, including, but not limited to, presentment, notice of dishonor and protest.

5. Guarantor hereby consents that from time to time Landlord may, without notice to Guarantor and without affecting any liability of Guarantor, waive or fail to enforce any of Landlord's rights under the terms of the Lease.

6. If more than one party shall execute this Guaranty, the term "Guarantor" shall mean all parties executing this Guaranty, and all such parties shall be jointly and severally liable.

7. Notwithstanding anything in this Guaranty to the contrary, if a bankruptcy petition is filed by or against Tenant or Guarantor, and the Tenant or Guarantor have made payments to the Landlord during any preference period as established by any bankruptcy or other similar laws, this Guaranty shall not be terminated, unless and until a final non-appealable decision of a court of competent jurisdiction has been entered determining that the Landlord shall be entitled to retain all such monies paid it by the Tenant or the Guarantor during such preference period. The obligations of the Guarantor under this Guaranty shall include the obligations to reimburse Landlord for any preferential payments received by Landlord during such period which Landlord has been required to return or repay. The Guarantor also hereby waive(s) any claim, right or remedy which the Guarantor may now have or hereafter acquire against the Tenant that arises hereunder and/or from the performance by any Guarantor hereunder including, without limitation, any claim, remedy or right of subrogation, reimbursement, exoneration, indemnification, or participation in any claim, right or remedy of Landlord against the Tenant, whether or not such claim, right or remedy arises in equity, under contract, by statute, under common law or otherwise.

8. The undersigned expressly agree(s) that this Guaranty is governed by the laws of the State of Florida, and the United States of America, whichever the context may require or permit and that proper venue for any action which may be brought under this Guaranty in addition to any other venue permitted by law shall be Orange County, Florida. Should Landlord institute any action under this Guaranty, the undersigned hereby submits itself to the jurisdiction of any court sitting in Florida.

9. Guarantor agrees to pay to Landlord all costs incurred by Landlord in collecting the amounts

Exhibit F-2

Tenant's Initials \_\_\_\_\_

due hereunder, enforcing the performance of the Guarantor hereunder and/or protecting its rights hereunder, including, but not limited to, reasonable fees for attorneys, paralegals and legal assistants, and expenses incurred in any and all judicial, bankruptcy, reorganization, administrative, receivership, or other proceedings. Such costs shall be paid regardless of whether suit is brought and shall include all trial and appellate levels including bankruptcy court.

10. This Guaranty may be executed in any number of identical counterparts, each of which shall be deemed an original and all of which, collectively, shall constitute one agreement; it being understood and agreed that signature pages may be detached from one or more such counterparts and combined with the signature pages from any other identical counterpart in order that one or more fully executed originals may be assembled.

IN WITNESS WHEREOF, this Guaranty has been executed and delivered as of the date and year first above written.

Signed, sealed and delivered in presence of:

\_\_\_\_\_  
(Print Name)\_\_\_\_\_

\_\_\_\_\_  
[Print Name] \_\_\_\_\_

\_\_\_\_\_  
(Print Name) \_\_\_\_\_

(Two Witnesses)

STATE OF

COUNTY OF

The foregoing instrument was signed, sealed, delivered, and acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, who is • personally known to me or produced \_\_\_\_\_ as identification.

(NOTARY SEAL)

Notary Signature: \_\_\_\_\_

Printed/typed name:

Exhibit F-3

Tenant's Initials \_\_\_\_\_

**EXHIBIT "G"**

THIS INSTRUMENT PREPARED BY  
AND SHOULD BE RETURNED TO:  
DEMETREE REAL ESTATE SERVICES, INC.  
Attn: Property Management Administrator  
941 W. Morse Blvde., Suite 315  
Winter Park, FL 32789

**TERMINATION OF LEASE AND MEMORANDUM**

This Termination of Lease and Memorandum ("Termination") is made effective as of the day of \_\_\_\_\_, 20\_\_, by and between [LANDLORD ENTITY], a **Florida limited liability company**, whose address is 1350 Orange Avenue, Suite 100, Winter Park, Florida 32789 (hereinafter "Landlord"), and [TENANT NAME], a **Florida limited liability company**, whose address is (hereinafter "Tenant")

WITNESSETH

**WHEREAS**, Landlord and Tenant have entered into a Lease dated [Date of Lease], amended by **First Amendment dated December 19, 2019**, as may be further amended from time to time (as amended, the "Lease") evidenced by that certain Memorandum of Lease recorded [Month] \_\_, 20\_\_ in Official Records Book \_\_\_\_, Page \_\_\_\_, Public Records of Miami-Dade County, Florida (the "Memorandum").

**WHEREAS**, Landlord and Tenant desire to terminate said Lease and Memorandum.

**NOW, THEREFORE**, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Recitals/Whereas Clauses; Capitalized Terms**: The whereas, clauses set forth above are true and correct in all respects and constitute a part of this Termination except as modified herein. Capitalized terms used herein shall have the meaning ascribed to such terms in this Termination and/or in the Lease or Memorandum.
2. **Termination**: The Lease and Memorandum are hereby terminated.
3. **Counterparts**: This Termination may be executed in two or more counterparts, each of which shall be and be taken to be an original, and all collectively but one instrument.

Exhibit G-1

Tenant's Initials\_\_\_\_\_



**IN WITNESS WHEREOF**, Landlord and Tenant have executed this Termination in manner and form sufficient to bind them as of the day and year above written.

**Signed, sealed and delivered  
in the presence of:**

**LANDLORD:**

**[LANDLORD ENTITY]  
a Florida limited liability company**

**By: \_\_\_\_\_  
Mary L. Demetree, Manager**

STATE OF FLORIDA §

COUNTY OF ORANGE §

The foregoing instrument was sworn to, subscribed and acknowledged before me by means of  physical presence or  online notarization, this \_\_ day of \_\_\_\_\_, 20\_\_, by **MARY L. DEMETREE**, as the Manager of [Landlord Entity], a Florida limited liability company, on behalf of the company,  who is personally known to me or  who has produced a Florida Driver's License or \_\_\_\_\_ as identification.

\_\_\_\_\_  
**Notary Public  
My Commission Expires:**

Signed, sealed and delivered  
in our presence:

TENANT:

[TENANT NAME]  
a Florida limited liability company

By: \_\_\_\_\_  
[Name & Title]

STATE OF FLORIDA §

COUNTY OF §

The foregoing instrument was sworn to, subscribed and acknowledged before me by means of [ ] physical presence or [ ] online notarization, this \_\_ day of \_\_\_\_\_, 20\_\_, by [NAME], as [Title] of [Tenant Name], a Florida limited liability company, [ ] who is personally known to me or [ ] who has produced a Florida Driver's License or \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

**EXHIBIT "H"**

**ACH AUTHORIZATION FORM**

I (we) hereby authorize DEMETREE REAL ESTATE SERVICES, as agent for \_\_\_\_\_ (PROPERTY) to initiate debit entries from my (our) checking/savings account at the financial institution listed below. I acknowledge that this authority will remain in full force and effect until Demetree Real Estate Services has received written notification from me (us) of its termination as to afford Demetree Real Estate Services and the financial institution a reasonable opportunity to act on it.

Name of Business: \_\_\_\_\_  
Business Address: \_\_\_\_\_  
Name of Financial Institution: \_\_\_\_\_  
Address of Financial Institution- Branch, City, State, Zip: \_\_\_\_\_  
Financial Institution Routing Number: \_\_\_\_\_  
Checking/Savings Account Number: \_\_\_\_\_



Amount Authorized to be Debited Monthly (Must be in Compliance with Lease and will adjust with rent): \_\_\_\_\_

Requested Draft Date (Must be in Compliance with Lease): \_\_\_\_\_

Name (Please Print): \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**\*\*A VOIDED check must be submitted, along with this completed form, for debits to be initiated. Please note that a Convenience Fee of \$1.95/transaction applies\*\***

I decline to pay via ACH, Credit Card, or Bank Draft and agree to pay a \$10.00 processing fee by submitting payment via Check, Cashier's Check, or Money Order \_\_\_\_\_

Exhibit H-1

Tenant's Initials \_\_\_\_\_